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4 MARKUP OF:

5 H.R. 4138, THE EXECUTIVE NEEDS TO FAITHFULLY OBSERVE AND
6 RESPECT CONGRESSIONAL ENFORCEMENTS OF THE LAW (ENFORCE) ACT;

7 H.R. 3732, THE IMMIGRATION COMPLIANCE ENFORCEMENT (ICE)
8 ACT; AND

9 H.R. 3973, THE FAITHFUL EXECUTION OF THE LAW ACT OF 2014

10 Wednesday, March 5, 2014

11 House of Representatives

12 Committee on the Judiciary

13 Washington, D.C.

14 The committee met, pursuant to call, at 10:34 a.m., in
15 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
16 [chairman of the committee] presiding.

17 Present: Representatives Goodlatte, Sensenbrenner,
18 Coble, Smith of Texas, Chabot, Bachus, Issa, Forbes, King,
19 Franks, Gohmert, Jordan, Poe, Marino, Gowdy, Labrador,
20 Farenthold, Holding, Collins, DeSantis, Smith of Missouri,
21 Conyers, Nadler, Scott, Lofgren, Jackson Lee, Cohen,
22 Johnson, Pierluisi, Chu, Deutch, Gutierrez, Richmond,
23 DelBene, Garcia, Jeffries, and Cicilline.

24 Staff Present: Shelley Husband, Majority Staff
25 Director; Branden Ritchie, Majority Deputy Staff
26 Director/Chief Counsel; Allison Halataei, Majority
27 Parliamentarian; Kelsey Deterding, Clerk; Dimple Shah,
28 Majority Counsel; Zachary Somers, Majority Counsel; Perry
29 Apelbaum, Minority Staff Director; Danielle Brown, Minority
30 Parliamentarian; James Park, Minority Counsel; and David
31 Shahoulian, Minority Counsel.

32

33 Chairman Goodlatte. Good morning. The committee will
34 come to order.

35 Without objection, the chair is authorized to declare a
36 recess at any time.

37 Pursuant to notice, I now call up H.R. 3973 for purposes
38 of markup and move that the committee report the bill
39 favorably to the House. The clerk will report the bill.

40 Ms. Deterding. H.R. 3973, to amend Section --

41 Chairman Goodlatte. Without objection, the bill is
42 considered as read and open for amendment at any time.

43 [The information follows:]

44

45 Chairman Goodlatte. And I will begin by recognizing
46 myself for an opening statement.

47 At today's markup, we will consider three bills to help
48 restore the separation of powers that prevent the executive
49 branch from stretching the constitutional limits on its
50 power. These bills -- the Enforce the Law Act, the ICE Act,
51 and the Faithful Execution of the Law Act -- allow Congress
52 to challenge executive overreach in the courts, prevent the
53 Obama administration from keeping a congressionally defunded
54 position at U.S. Immigration and Customs Enforcement, and
55 increase accountability and transparency when the executive
56 branch decides not to enforce a law.

57 It is ultimately up to Congress to use the legislative
58 authority it is granted in the Constitution to check the
59 President's overreach and restore balance to our system of
60 government. The bills we are going to consider at today's
61 markup are an exercise of that authority.

62 Although no legislation is a perfect solution to the
63 unprecedented unilateral actions of this administration, the
64 legislation we are going to consider today is a very good
65 step in Congress' exercise of its authority to ensure that

66 the President takes care that the laws be faithfully
67 executed.

68 Article II, Section 3 of the U.S. Constitution declares
69 that the President shall take care that the laws be
70 faithfully executed. However, President Obama has failed on
71 several occasions to enforce acts of Congress that he
72 disagrees with for policy reasons and has stretched his
73 regulatory authority to put in place policies that Congress
74 has refused to enact.

75 Although President Obama is not the first President to
76 stretch his powers beyond their constitutional limits,
77 executive overreach has accelerated at an alarming rate
78 under his administration. To help prevent executive
79 overreach and require greater disclosure when it occurs,
80 Representative DeSantis introduced H.R. 3973, the Faithful
81 Execution of the Law Act.

82 I want to thank Representative DeSantis for introducing
83 this common sense legislation to ensure that there is
84 greater transparency and disclosure regarding the executive
85 branch's enforcement of Federal law.

86 The Justice Department is currently required by law to

87 report to Congress whenever it decides to adopt a policy to
88 refrain from enforcing Federal law on the grounds that the
89 law in question is unconstitutional. The Faithful Execution
90 of the Law Act strengthens this provision by requiring the
91 Attorney General to report to Congress whenever a Federal
92 official establishes or implements a formal or informal
93 policy to refrain from enforcing a Federal law and the
94 reason for the nonenforcement, regardless of whether it is
95 being done on constitutional or policy grounds.

96 As Professor Jonathan Turley observed regarding this
97 legislation in his testimony at our hearing last week, it is
98 hard to see the argument against such disclosures. Too
99 often Congress has only been informed of major changes by
100 leaks to the media. Congress should not have to rely on
101 media leaks and other unofficial sources to find out that
102 the executive branch has decided not to enforce Federal
103 laws.

104 Congress cannot possibly know the extent of executive
105 branch nonenforcement of the laws without mandatory
106 disclosure of all nonenforcement policies by the person who
107 should be fully aware of such policies, namely the Attorney

108 General, the Nation's chief law enforcement officer.
109 Passage of H.R. 3973 is essential if Congress is going to
110 play an active role in overseeing that the separation of
111 powers between the branches is maintained and that the
112 President is faithfully executing the laws.

113 I urge my colleagues to support this legislation, and I
114 now recognize the ranking member of the committee, the
115 gentleman from Michigan, Mr. Conyers, for his opening
116 statement.

117 Mr. Conyers. Thank you, Chairman Goodlatte and members
118 of the committee.

119 I begin my remarks by noting the utter lack of
120 deliberative process pertaining to today's markup talking
121 about unilateral actions of the administration, but for each
122 of the bills that we are to consider today, the committee
123 has not held a single legislative hearing. In addition,
124 there have not been any subcommittee markup.

125 When coupled with the fact that my colleagues on the
126 other side have provided only the minimum notice of today's
127 markup, it is no shock that my colleagues on this side of
128 the aisle consider today's markup to not be a serious

129 attempt to legislate.

130 Nevertheless, I will describe the various ways that H.R.
131 3973 is fundamentally flawed. It is called the Faithful
132 Execution of the Law Act of 2014. Without being overly
133 critical, because of the draftsmanship of H.R. 3973, this
134 bill would impose burdensome and wasteful requirements on
135 the Justice Department to the detriment of its law
136 enforcement functions.

137 Current law, as codified in Section 530D of Title 28 of
138 the United States Code, requires the Attorney General to
139 report to Congress any instance in which the Attorney
140 General or any Justice Department official establishes or
141 implements a formal or informal policy against enforcing,
142 applying, or administering a provision of Federal law on the
143 grounds that such provision is unconstitutional.

144 Current law, therefore, allows an administration to
145 refuse to enforce a law in the extremely limited
146 circumstance where a law is deemed unconstitutional. No
147 other reason is sufficient. The bill before us today,
148 however, would remove the critical language that limits
149 nonenforcement only to instances where there is a

150 constitutional objection to a law.

151 Section 2(2) of H.R. 3973 strikes the limiting language
152 on the grounds that such provision is unconstitutional and
153 replaces it with a requirement only to state the grounds for
154 such policy. Though possibly inadvertent, this change
155 creates an open-ended invitation for any administration to
156 refuse to enforce any law for any reason whatsoever. This
157 dangerous change should be rejected.

158 In addition, the bill fails to define exactly which
159 individuals in the Federal Government would qualify as a
160 "Federal officer." As a result, the Attorney General would
161 have to review enforcement decisions by the hundreds, maybe
162 even the thousands, of individuals who work in the executive
163 branch and may qualify as officers in order to determine
164 whether their decisions trigger the bill's reporting
165 requirement. Such a burden would drain the already-limited
166 enforcement resources that the Justice Department must work
167 with to fulfill its law enforcement mission.

168 Moreover, to the extent that H.R. 3973 is aimed at
169 allowing Congress to file suit under the ENFORCE Act, it is
170 yet another attempt by the majority to prevent the

171 President's implementation of duly enacted legislative
172 initiatives that they oppose and to stymie the President's
173 discretion in enforcing laws.

174 And as I have previously noted, allowing flexibility in
175 the implementation of a new program, even where the statute
176 mandates a specific deadline, is neither unusual nor a
177 constitutional violation, but part and parcel of the
178 President's duty to take care that he faithfully execute the
179 laws, and to exercise the enforcement discretion is a
180 tradition power of the executive. And therefore, it is no
181 surprise that the Supreme Court has consistently held that
182 the exercise of such discretion is a function of the
183 President's powers under the "take care" clause.

184 This principle was reiterated in 2012 by the court in
185 its *Arizona v. United States* decision and is particularly
186 true if the bill's proponents intend to reach decisions like
187 the deferred action on removing dreamers from the country.

188 That decision was a routine exercise of enforcement
189 discretion, but H.R. 3973 would require the Attorney General
190 to report on every such routine decision to the Congress.

191 And as Professor Christopher Schroeder, the minority witness

192 from last week's hearing on this issue, noted, the number of
193 such enforcement decisions are simply too numerous to even
194 count.

195 Given the foregoing, I must emphasize that this markup
196 is a particular waste of time, especially with our other far
197 more pressing concerns to address. Now I would like to
198 suggest that instead of using today's markup as yet another
199 opportunity to bash immigrants or to rail against giving
200 health insurance to those who would otherwise be without it,
201 we should be moving on immigration reform, helping
202 struggling student loan borrowers, and fighting
203 discrimination, among other matters.

204 I am sorry that it has been determined that we will use
205 our limited committee time to mark up these bills, which
206 have not only little merit but no chance of passage. And
207 more importantly, we are doing a disservice to the American
208 people in choosing to spend our time in this manner.

209 I thank you for the time, and I yield back.

210 Chairman Goodlatte. Thank you, Mr. Conyers.

211 And now I would like to recognize the gentleman from
212 Florida and the sponsor of this legislation, Mr. DeSantis,

213 for his opening statement.

214 Mr. DeSantis. Well, thank you, Mr. Chairman.

215 I was going to give a brief overview, but I think you
216 characterized the bill very well. So let me just take a
217 couple of minutes to respond to some of the comments that
218 have been made.

219 First of all, 28 U.S.C. 530D does not authorize the
220 President not to enforce a law that is unconstitutional.
221 That is something that is inherent in the constitutional
222 oath of office and the President's duty to preserve and
223 protect and defend the Constitution. So if he is faced with
224 a situation in which executing a particular statute would
225 violate the Nation's fundamental law, then he has obviously
226 got to choose the Constitution. As Hamilton said in The
227 Federalist, "The will of the people must trump the intention
228 of their agents."

229 So all 28 U.S.C. 530D does is say when you do that,
230 report it to Congress so that we are able to evaluate that
231 accordingly, and both the Bush and Obama administrations
232 have done that. So to say that this bill is an invitation
233 to nonenforcement is just completely without merit. The

234 bill does not authorize the President not to enforce laws on
235 policy grounds.

236 We are faced with the situation where we have an
237 administration that is habitually asserting the ability to
238 do that. And so, all we are saying here is if you are going
239 to do that, report it to Congress like you do on the
240 constitutional issues so that we can evaluate it
241 accordingly. And the hope is, is that this will provide
242 sunlight that can be a disinfectant, and it will serve to
243 hinder the executive branch from usurping the authority of
244 Congress.

245 Clearly, if Congress enacts a law, Members of Congress
246 deserve to be given reasons for the nonenforcement. And I
247 am not persuaded that this is somehow going to be
248 burdensome. I mean, the executive has the duty to take care
249 that the laws are faithfully executed. It is only going to
250 be burdensome if the executive continues to pick and choose
251 which laws to enforce. If you have faithful execution of
252 the law, you are probably not going to have very many
253 instances where this even becomes an issue.

254 And I think it was interesting in the Senate Judiciary

255 Committee last month, Attorney General Holder testified.
256 Senator Mike Lee asked the Attorney General about the
257 rationale for the constant employer mandate delays under
258 Obamacare. And basically, the Attorney General said, well,
259 I am just not caught up on that analysis right now. So it
260 was really a pathetic performance to not even be able to
261 articulate the actions of an administration to not enforce
262 the law.

263 And then I would mention one final thing, and this is
264 from The Hill newspaper. This isn't the National Review or
265 Breitbart. This is The Hill. "New Obamacare delay to help
266 mid-term Dems. Move will avoid cancellation wave before
267 Election Day."

268 So this, now the reports are there is going to be an
269 extension of the ability to "keep plans." In other words,
270 Obamacare makes the plans illegal under the terms of the law
271 and the applicable regs. The President last November said
272 he was not going to enforce those. And so, basically, you
273 have illegal plans under the law still being offered, but
274 nobody is enforcing that.

275 This is now going to be extended, and the reason this is

276 being reported as straight news is to help the Democratic
277 Party in this mid terms election. Now that is clearly an
278 unacceptable reason to not enforce a law. The House
279 actually passed a bill that would have allowed people to
280 keep their plans and would have overrode these mandates.

281 And so, I think that this is a good government bill.
282 These are things that need to be debated out in the open.
283 And if you are not enforcing a law and you are saying it is
284 because the statute is too difficult to implement, when you
285 see headlines like this saying it is strategically timed to
286 relieve political accountability for people who may have
287 supported it, you know, I think that is something that the
288 American people need to be able to vet and make decisions
289 about accordingly.

290 So thank you, Mr. Chairman, for bringing up the bill,
291 and I urge my colleagues on the committee to support its
292 passage. And I yield back.

293 Chairman Goodlatte. The chair thanks the gentleman.

294 The chair was going to turn next to the gentleman from
295 Tennessee, Mr. Cohen, the ranking member on the Subcommittee
296 on the Constitution and Civil Justice, but not seeing his

297 presence, we will reserve that until he gets here, and we
298 will now move on to consideration of amendments.

299 Mr. Conyers. Mr. Chairman?

300 Chairman Goodlatte. For what purpose does the gentleman
301 from Michigan seek recognition?

302 Mr. Conyers. I have an amendment at the desk.

303 Chairman Goodlatte. The clerk will report the
304 amendment.

305 Ms. Deterding. Amendment to H.R. 3973, offered by Mr.

306 Conyers. Page 2 after line 6, insert the following:

307 Section 3 --

308 Chairman Goodlatte. Without objection, the amendment is
309 considered as read.

310 [The amendment of Mr. Conyers follows:]

311

312 Chairman Goodlatte. And the gentleman from Michigan is
313 recognized for 5 minutes on his amendment.

314 Mr. Conyers. Thank you very much.

315 The amendment merely states that nothing in this act nor
316 in the amendments made by this act limits or affects any
317 action taken by the Attorney General or any officer of the
318 Department of Justice or any other Federal officer that
319 concerns the foreign affairs of the United States.

320 So, as everyone always states in their amendment, it is
321 simple and straightforward, like all amendments are almost.
322 It amends the underlying bill to make clear that the conduct
323 of foreign affairs is outside the bill's scope. And I offer
324 this amendment because, as presently drafted, the
325 legislation is impractical and dangerous and likely
326 unconstitutional.

327 First, it is unreasonable as a practical matter to
328 expect the Attorney General to be in a position to report on
329 the bill's application to the State Department and whether
330 or how it is implementing the laws, rules, and policies
331 within its purview. The State Department is an autonomous
332 Federal agency with its own legal counsel and has little or

333 no overlap with the Justice Department.

334 Moreover, the bill applies to any Federal officer, and
335 the Supreme Court has held that such term includes any
336 appointee exercising significant authority pursuant to the
337 laws of the U.S. It would be, therefore, not only
338 inappropriate, but literally impossible for the Attorney
339 General to be monitoring thousands of Federal officers in
340 the State Department and elsewhere to determine how they are
341 enforcing the various laws and policies unique to their
342 department.

343 And applying this legislation to the State Department
344 would put our Nation in the untenable position of being
345 forced to disclose certain critical legal and policy
346 decisions to other nations, including our enemies, whoever
347 they may be, when it is not in our best interests to do so.

348 For example, consider the present situation in the
349 Ukraine and Egypt. Section 508 of the Foreign Assistance
350 Act prevents the executive branch from expending any funds to
351 assist a nation whose leader was deposed in a coup. For a
352 variety of reasons, the State Department has not yet stated
353 whether the situations in either of these countries

354 constitute a coup and, as a result, has not yet enforced
355 this provision of the Foreign Assistance Act.

356 If H.R. 3973 were passed into law, however, the State
357 Department would either be required to make such an
358 announcement, or the Attorney General would be required to
359 issue a report explaining why the State Department was not
360 enforcing the law. Any failure to do so -- any failure to
361 report by the Attorney General would allow a Federal court
362 to intervene and mandate the issuance of the report, in
363 essence forcing our Government to show its hand before it
364 was in our national interest to do so. Such involvement by
365 the courts in the internal working and deliberations of any
366 agency, but most particularly the State Department, would
367 raise significant separation of power concerns.

368 It is also likely that any court asked to interfere in
369 agency deliberations and decisions in the manner proposed by
370 H.R. 3973 might or would refuse to do so under the political
371 question doctrine set forth by the Supreme Court in the
372 Baker v. Carr decision of 1962. And so, for those reasons,
373 I urge my colleagues on both sides of the aisle to support
374 this common sense amendment and keep the Federal courts out

375 of sensitive foreign policy judgments.

376 I thank you and yield back the balance of my time.

377 Chairman Goodlatte. The chair recognizes himself in
378 opposition to the amendment, as it would grant a wholesale
379 exemption to the bill for matters related to foreign
380 affairs.

381 Many issues related to foreign affairs directly relate
382 to the President's duty to take care that the laws be
383 faithfully executed. To take just one example, Congress
384 routinely appropriates Federal taxpayer money for
385 specifically defined foreign affairs purposes, and the
386 executive branch should not be immune from reporting
387 requirements if it fails to faithfully direct those funds as
388 they are directed to be appropriated by the Congress.

389 Congress also has the specifically enumerated powers
390 over commerce with foreign nations and to punish piracies
391 and felonies committed on the high seas and offenses against
392 the law of nations, the power to declare war and make rules
393 concerning captures anywhere on land and water. All of
394 these specifically enumerated powers clearly concern the
395 foreign affairs of the United States but would be excluded

396 from coverage under the bill under this amendment. That
397 would be wrong.

398 The laws Congress enacts, including laws that concern
399 foreign affairs, should all be executed faithfully by the
400 executive branch. And so, I oppose this gutting amendment.

401 The question occurs on the amendment offered by the
402 gentleman from Michigan.

403 All those in favor, respond by saying aye.

404 Those opposed, no.

405 In the opinion of the chair, the noes have it.

406 Mr. Conyers. May I have a record vote?

407 Chairman Goodlatte. A recorded vote is requested, and
408 the clerk will call the roll.

409 Ms. Deterding. Mr. Goodlatte?

410 Chairman Goodlatte. No.

411 Ms. Deterding. Mr. Goodlatte votes no.

412 Mr. Sensenbrenner?

413 [No response.]

414 Ms. Deterding. Mr. Coble?

415 Mr. Coble. No.

416 Ms. Deterding. Mr. Coble votes no.

417 Mr. Smith of Texas?
418 [No response.]
419 Ms. Deterding. Mr. Chabot?
420 Mr. Chabot. No.
421 Ms. Deterding. Mr. Chabot votes no.
422 Mr. Bachus?
423 Mr. Bachus. No.
424 Ms. Deterding. Mr. Bachus votes no.
425 Mr. Issa?
426 [No response.]
427 Ms. Deterding. Mr. Forbes?
428 [No response.]
429 Ms. Deterding. Mr. King?
430 Mr. King. No.
431 Ms. Deterding. Mr. King votes no.
432 Mr. Franks?
433 Mr. Franks. No.
434 Ms. Deterding. Mr. Franks votes no.
435 Mr. Gohmert?
436 [No response.]
437 Ms. Deterding. Mr. Jordan?

438 Mr. Jordan. No.

439 Ms. Deterding. Mr. Jordan votes no.

440 Mr. Poe?

441 [No response.]

442 Ms. Deterding. Mr. Chaffetz?

443 [No response.]

444 Ms. Deterding. Mr. Marino?

445 Mr. Marino. No.

446 Ms. Deterding. Mr. Marino votes no.

447 Mr. Gowdy?

448 Mr. Gowdy. No.

449 Ms. Deterding. Mr. Gowdy votes no.

450 Mr. Labrador?

451 Mr. Labrador. No.

452 Ms. Deterding. Mr. Labrador votes no.

453 Mr. Farenthold?

454 Mr. Farenthold. No.

455 Ms. Deterding. Mr. Farenthold votes no.

456 Mr. Holding?

457 Mr. Holding. No.

458 Ms. Deterding. Mr. Holding votes no.

459 Mr. Collins?

460 Mr. Collins. No.

461 Ms. Deterding. Mr. Collins votes no.

462 Mr. DeSantis?

463 Mr. DeSantis. No.

464 Ms. Deterding. Mr. DeSantis votes no.

465 Mr. Smith of Missouri?

466 Mr. Smith of Missouri. No.

467 Ms. Deterding. Mr. Smith of Missouri votes no.

468 Mr. Conyers?

469 Mr. Conyers. Aye.

470 Ms. Deterding. Mr. Conyers votes aye.

471 Mr. Nadler?

472 Mr. Nadler. Aye.

473 Ms. Deterding. Mr. Nadler votes aye.

474 Mr. Scott?

475 Mr. Scott. Aye.

476 Ms. Deterding. Mr. Scott votes aye.

477 Ms. Lofgren?

478 Ms. Lofgren. Aye.

479 Ms. Deterding. Ms. Lofgren votes aye.

480 Ms. Jackson Lee?
481 [No response.]
482 Ms. Deterding. Mr. Cohen?
483 Mr. Cohen. Aye.
484 Ms. Deterding. Mr. Cohen votes aye.
485 Mr. Johnson?
486 [No response.]
487 Ms. Deterding. Mr. Pierluisi?
488 [No response.]
489 Ms. Deterding. Ms. Chu?
490 Ms. Chu. Aye.
491 Ms. Deterding. Ms. Chu votes aye.
492 Mr. Deutch?
493 [No response.]
494 Ms. Deterding. Mr. Gutierrez?
495 [No response.]
496 Ms. Deterding. Ms. Bass?
497 [No response.]
498 Ms. Deterding. Mr. Richmond?
499 [No response.]
500 Ms. Deterding. Ms. DelBene?

501 Ms. DelBene. Aye.

502 Ms. Deterding. Ms. DelBene votes aye.

503 Mr. Garcia?

504 Mr. Garcia. Aye.

505 Ms. Deterding. Mr. Garcia votes aye.

506 Mr. Jeffries?

507 Mr. Jeffries. Aye.

508 Ms. Deterding. Mr. Jeffries votes aye.

509 Mr. Cicilline?

510 Mr. Cicilline. Aye.

511 Ms. Deterding. Mr. Cicilline votes aye.

512 Chairman Goodlatte. The gentleman from Wisconsin?

513 Mr. Sensenbrenner. No.

514 Ms. Deterding. Mr. Sensenbrenner votes no.

515 Chairman Goodlatte. The gentleman from Virginia, Mr.

516 Forbes?

517 Mr. Forbes. No.

518 Ms. Deterding. Mr. Forbes votes no.

519 Chairman Goodlatte. The gentleman from Texas, Mr.

520 Gohmert?

521 Mr. Gohmert. No.

522 Ms. Deterding. Mr. Gohmert votes no.

523 Chairman Goodlatte. The gentleman from Georgia, Mr.

524 Johnson?

525 Mr. Johnson. Aye.

526 Ms. Deterding. Mr. Johnson votes aye.

527 Chairman Goodlatte. Is there any Member who has not

528 voted who wishes to vote?

529 [No response.]

530 Chairman Goodlatte. The clerk will report.

531 Ms. Deterding. Mr. Chairman, 11 Members voted aye; 18

532 Members voted nay.

533 Chairman Goodlatte. And the amendment is not agreed to.

534 Are there any other amendments?

535 [No response.]

536 Chairman Goodlatte. A reporting quorum being present,

537 the question is on the motion to report the bill, H.R. 3973,

538 favorably to the House.

539 Those in favor will say aye.

540 Those opposed, no.

541 In the opinion of the chair, the ayes have it, and the

542 bill --

543 Mr. Conyers. May I have a recorded vote?

544 Chairman Goodlatte. A recorded vote is requested, and

545 the clerk will call the roll.

546 Ms. Deterding. Mr. Goodlatte?

547 Chairman Goodlatte. Aye.

548 Ms. Deterding. Mr. Goodlatte votes aye.

549 Mr. Sensenbrenner?

550 Mr. Sensenbrenner. Aye.

551 Ms. Deterding. Mr. Sensenbrenner votes aye.

552 Mr. Coble?

553 Mr. Coble. Aye.

554 Ms. Deterding. Mr. Coble votes aye.

555 Mr. Smith of Texas?

556 [No response.]

557 Ms. Deterding. Mr. Chabot?

558 Mr. Chabot. Aye.

559 Ms. Deterding. Mr. Chabot votes aye.

560 Mr. Bachus?

561 Mr. Bachus. Aye.

562 Ms. Deterding. Mr. Bachus votes aye.

563 Mr. Issa?

564 [No response.]

565 Ms. Deterding. Mr. Forbes?

566 [No response.]

567 Ms. Deterding. Mr. King?

568 Mr. King. Aye.

569 Ms. Deterding. Mr. King votes aye.

570 Mr. Franks?

571 Mr. Franks. Aye.

572 Ms. Deterding. Mr. Franks votes aye.

573 Mr. Gohmert?

574 Mr. Gohmert. Aye.

575 Ms. Deterding. Mr. Gohmert votes aye.

576 Mr. Jordan?

577 Mr. Jordan. Yes.

578 Ms. Deterding. Mr. Jordan votes aye.

579 Mr. Poe?

580 [No response.]

581 Ms. Deterding. Mr. Chaffetz?

582 [No response.]

583 Ms. Deterding. Mr. Marino?

584 Mr. Marino. Yes.

585 Ms. Deterding. Mr. Marino votes aye.
586 Mr. Gowdy?
587 Mr. Gowdy. Yes.
588 Ms. Deterding. Mr. Gowdy votes aye.
589 Mr. Labrador?
590 Mr. Labrador. Yes.
591 Ms. Deterding. Mr. Labrador votes aye.
592 Mr. Farenthold?
593 Mr. Farenthold. Aye.
594 Ms. Deterding. Mr. Farenthold votes aye.
595 Mr. Holding?
596 Mr. Holding. Aye.
597 Ms. Deterding. Mr. Holding votes aye.
598 Mr. Collins?
599 Mr. Collins. Aye.
600 Ms. Deterding. Mr. Collins votes aye.
601 Mr. DeSantis?
602 Mr. DeSantis. Aye.
603 Ms. Deterding. Mr. DeSantis votes aye.
604 Mr. Smith of Missouri?
605 Mr. Smith of Missouri. Yes.

606 Ms. Deterding. Mr. Smith of Missouri votes aye.

607 Mr. Conyers?

608 Mr. Conyers. No.

609 Ms. Deterding. Mr. Conyers votes no.

610 Mr. Nadler?

611 Mr. Nadler. No.

612 Ms. Deterding. Mr. Nadler votes no.

613 Mr. Scott?

614 Mr. Scott. No.

615 Ms. Deterding. Mr. Scott votes no.

616 Ms. Lofgren?

617 Ms. Lofgren. No.

618 Ms. Deterding. Ms. Lofgren votes no.

619 Ms. Jackson Lee?

620 [No response.]

621 Ms. Deterding. Mr. Cohen?

622 [No response.]

623 Ms. Deterding. Mr. Johnson?

624 Mr. Johnson. No.

625 Ms. Deterding. Mr. Johnson votes no.

626 Mr. Pierluisi?

627 Mr. Pierluisi. No.

628 Ms. Deterding. Mr. Pierluisi votes no.

629 Ms. Chu?

630 Ms. Chu. No.

631 Ms. Deterding. Ms. Chu votes no.

632 Mr. Deutch?

633 [No response.]

634 Ms. Deterding. Mr. Gutierrez?

635 [No response.]

636 Ms. Deterding. Ms. Bass?

637 [No response.]

638 Ms. Deterding. Mr. Richmond?

639 [No response.]

640 Ms. Deterding. Ms. DelBene?

641 Ms. DelBene. No.

642 Ms. Deterding. Ms. DelBene votes no.

643 Mr. Garcia?

644 [No response.]

645 Ms. Deterding. Mr. Jeffries?

646 Mr. Jeffries. No.

647 Ms. Deterding. Mr. Jeffries votes no.

648 Mr. Cicilline?

649 Mr. Cicilline. No.

650 Ms. Deterding. Mr. Cicilline votes no.

651 Chairman Goodlatte. The gentleman from Tennessee?

652 Mr. Cohen. I presume I am not recorded. Am I correct?

653 Ms. Deterding. That is correct.

654 Mr. Cohen. I would like to be recorded as voting no.

655 Ms. Deterding. Mr. Cohen votes no.

656 Mr. Cohen. Thank you. Thank you.

657 Chairman Goodlatte. Is there any Member who has not

658 voted who wishes to vote?

659 [No response.]

660 Chairman Goodlatte. The clerk will report.

661 Ms. Deterding. Mr. Chairman, 17 Members voted aye; 11

662 Members voted nay.

663 Chairman Goodlatte. The ayes have it, and the bill is

664 ordered reported favorably to the House. Members will have

665 2 days to submit views.

666 Pursuant to notice, I now call up H.R. 3732 for purposes

667 of markup and move that the committee report the bill

668 favorably to the House.

669 The clerk will report the bill.

670 Ms. Deterding. H.R. 3732, to prohibit the Secretary of
671 Homeland Security from using Federal funds for the position
672 of public advocate or the position of Deputy Assistant
673 Director of Custody Programs and Community Outreach within
674 U.S. Immigration and Customs Enforcement, and for other
675 purposes.

676 Chairman Goodlatte. Without objection, the bill is
677 considered as read and open for amendment at any point.

678 [The information follows:]

679

680 Chairman Goodlatte. And I will begin by recognizing
681 myself for an opening statement.

682 I want to thank Representative Diane Black for
683 introducing H.R. 3732, the Immigration Compliance
684 Enforcement Act. This legislation prohibits the use of
685 Federal taxpayer dollars to fund the positions of public
686 advocate and Deputy Assistant Director of Custody Programs
687 and Community Outreach within the U.S. Immigration and
688 Customs Enforcement.

689 In addition, the bill prohibits the use of taxpayer
690 dollars to fund any other position within ICE, the functions
691 of which are substantially the same as these two positions.
692 This straightforward legislation is needed because the Obama
693 administration skirted a previous attempt by Congress to
694 defund the position of public advocate within ICE in
695 violation of the spirit and arguably the letter of the
696 President's constitutional duty to faithfully execute the
697 laws.

698 In February of 2012, the Obama administration announced
699 the creation of a public advocate position to serve as a
700 point of contact for unlawful and criminal immigrants in

701 deportation proceedings, as well as for advocacy and
702 community groups. In the summer of 2012, Representative
703 Black introduced an amendment to the Department of Homeland
704 Security Appropriations Act to defund the public advocate
705 position. Her amendment passed the House of Representatives
706 by a voice vote, and the amendment language was included in
707 the final continuing resolution that President Obama signed
708 into law on March 26, 2013.

709 The clause read, "None of the funds made available by
710 this act may be used to provide funding for the position of
711 public advocate within U.S. Immigration and Customs
712 Enforcement." However, last August, it was discovered that
713 rather than eliminating the public advocate position, the
714 administration quietly changed the title of public advocate
715 to Deputy Assistant Director of Custody Programs and
716 Community Outreach to avoid complying with the very law the
717 President signed.

718 It was a change in name only. The administration kept
719 the same person in the position and made no changes to the
720 job itself. In fact, prior to Congress' defunding of the
721 public advocate, the Deputy Assistant Director of Custody

722 Programs and Community Outreach did not exist.

723 Moreover, since its creation, the Office of Custody
724 Programs and Community Outreach has housed a number of
725 programs and staff members who previously operated within
726 the Office of the Public Advocate. Accordingly, in order to
727 ensure that the public advocate and any similar position is
728 eliminated, H.R. 3732 prohibits Federal taxpayer money from
729 being used to fund any position that performs the functions
730 of either the public advocate or the Deputy Assistant
731 Director of Custody Programs and Community Outreach.

732 Although we should not be forced to pass this
733 legislation to defund a position that has already been
734 defunded, ICE's decision to rename rather than eliminate the
735 position of public advocate requires us to do so.

736 I urge my colleagues to support this legislation, and I
737 now recognize the ranking member of the committee, the
738 gentleman from Michigan, Mr. Conyers, for his opening
739 statement.

740 Mr. Conyers. Thank you, Chairman Goodlatte.

741 Members of the committee, I am disappointed that we are
742 here today to consider H.R. 3273, the Immigration Compliance

743 Enforcement Act. To me, this signals a major step backward
744 in the bipartisan effort to pass meaningful immigration
745 reform.

746 Just a month ago, Republican leadership announced
747 principles supporting immigration reform and immigrant
748 communities across the country. Yet the first immigration
749 legislation our committee is considering after that
750 announcement is a bill that actually endangers the lives of
751 people in those same immigrant communities.

752 This bill is called Immigration Compliance Enforcement
753 Act, but it really has nothing to do with compliance by the
754 administration. It has nothing to do with immigration
755 enforcement.

756 In fact, the sole purpose of this legislation is to
757 completely defund an office within Immigration and Customs
758 Enforcement, namely ICE, that is tasked with no less than
759 ensuring the physical safety of immigrants in ICE custody
760 and improving the agency's relationship with immigrant
761 communities and advocacy organizations. Among its many
762 duties, this office oversees various policies and programs,
763 including detention reform initiatives and a national

764 telephone hotline that are designed to protect immigrants
765 from harm.

766 So what kind of harm are we talking about here? The
767 harm of sexual assault in detention. The harm of deficient
768 medical care for detained immigrants facing serious and
769 potentially life-threatening conditions. The harm of minor
770 children left unattended because of immigration enforcement
771 actions. The harm of having a mother's parental rights
772 terminated because she is prevented from participating in
773 hearings and other matters concerning her children.

774 These are harms that the Office of Custody Programs and
775 Community Outreach tries to prevent, but my colleagues and
776 friends on the other side of the aisle appear to be offended
777 by the existence of such an office. When did protecting
778 people from harm and building good relationships with
779 communities become a subversion of the law?

780 Every major Federal law enforcement agency has an office
781 filled with personnel dedicated to community outreach. This
782 is true of the FBI; Alcohol, Tobacco, and Firearms, ATF; the
783 Drug Enforcement Administration; and United States attorney
784 offices throughout the Nation. It is also true of local law

785 enforcement agencies throughout the country, but
786 unfortunately, when it comes to immigrants and immigrant
787 communities, my colleagues, some appear to see a sinister
788 plot everywhere they look.

789 And so, in closing, I want to ask my colleagues this
790 question. When is enough enough? At what point can we say
791 it is time to put away the anti-immigrant rhetoric, the
792 demagoguery, and the synthetic scandals? When can we start
793 working on the real issues that the American people want
794 solutions to?

795 Americans overwhelmingly want comprehensive immigration
796 reform because it is what is right for our communities, our
797 businesses, and our families. So let us stop the game
798 playing and finally get to work.

799 And Mr. Chairman, I yield back the balance of my time
800 and thank you.

801 Chairman Goodlatte. The chair thanks the gentleman.

802 I have an amendment at the desk, and the clerk will
803 report the amendment.

804 Ms. Lofgren. Mr. Chairman?

805 Mr. Nadler. Mr. Chairman?

806 Chairman Goodlatte. For what purpose does the gentleman
807 from New York seek recognition?

808 Mr. Nadler. Strike the last word.

809 Chairman Goodlatte. The gentleman is eligible to strike
810 the last word or make amendments at any time. But I have
811 recognized myself for the purpose of offering an amendment,
812 and the gentleman will be recognized in due course.

813 The clerk will report the amendment.

814 Ms. Lofgren. Mr. Chairman?

815 Chairman Goodlatte. For what purpose does the
816 gentlewoman from California seek recognition?

817 Ms. Lofgren. I guess it is a parliamentary inquiry. I
818 was wondering if the chair and the ranking member of the
819 Immigration Subcommittee were going to be permitted to offer
820 opening statements?

821 Chairman Goodlatte. The chair and the ranking member
822 will be recognized in due order for either the purpose of
823 offering an amendment or making a statement at the
824 appropriate time. At this time, the chair will ask the
825 clerk to report the amendment.

826 Ms. Lofgren. Mr. Chairman, in furtherance of my

827 inquiry, this would be normally the appropriate time to
828 offer an opening statement. And I would request that I be
829 permitted to offer an opening statement.

830 Chairman Goodlatte. The gentlewoman will be recognized
831 at the appropriate time. But at this time --

832 Ms. Lofgren. This is the appropriate time, Mr.
833 Chairman.

834 Chairman Goodlatte. The appropriate time is when the
835 chair recognizes the gentlewoman, and she will be recognized
836 in due order.

837 And the clerk will report the amendment.

838 Ms. Lofgren. Mr. Chairman? Mr. Chairman, if I may, in
839 furtherance of the inquiry? In the last bill, the chair and
840 ranking member of the subcommittee were permitted to offer
841 opening statements.

842 Mr. Sensenbrenner. Mr. Chairman, I demand the regular
843 order.

844 Chairman Goodlatte. The gentleman from Wisconsin's
845 request for regular order is noted.

846 The gentlewoman is not stating a parliamentary inquiry,
847 and the clerk will report the amendment.

848 Ms. Lofgren. Mr. Chairman, if I may?

849 Chairman Goodlatte. For what purpose does the
850 gentlewoman seek recognition?

851 Ms. Lofgren. A parliamentary inquiry.

852 Chairman Goodlatte. The gentlewoman is recognized.

853 Ms. Lofgren. The regular order has customarily included
854 opening statements from the chair and ranking member of the
855 subcommittees on a bill that has -- is within the
856 jurisdiction of those subcommittees, does it not?

857 Chairman Goodlatte. The gentlewoman will be recognized
858 in due course, and in recognition of her request, after the
859 consideration of this amendment, she will be recognized
860 next.

861 Ms. Lofgren. I move to strike the last word.

862 Mr. Nadler. Mr. Chairman?

863 Chairman Goodlatte. The chair has business before the
864 committee now.

865 Mr. Nadler. Mr. Chairman, parliamentary inquiry.

866 Chairman Goodlatte. For what purpose does the gentleman
867 from New York seek recognition?

868 Mr. Nadler. Is it not regular order and customary that

869 the opening statements of the subcommittee chairs and
870 ranking members be done after the introduction of a bill
871 before amendments are considered?

872 Chairman Goodlatte. The chair has the power of
873 recognition, and the chair has offered an amendment, which
874 the clerk will report.

875 Ms. Deterding. Amendment to H.R. --

876 Mr. Nadler. That does not answer my question.

877 Chairman Goodlatte. Without objection, the amendment is
878 considered as read.

879 [The amendment of Chairman Goodlatte follows:]

880

881 Chairman Goodlatte. And I recognize myself for an
882 opening statement to explain the amendment.

883 This amendment makes technical and narrowing changes to
884 H.R. 3732, the Immigration Compliance Enforcement Act, or
885 ICE Act. As enacted, the Consolidated and Continuing
886 Appropriations Act of 2013 contained language to defund the
887 position of the ICE public advocate. That position was
888 created by the administration to serve as a point of contact
889 for unlawful immigrants within the Department of Homeland
890 Security and to act as their advocate.

891 Though Congress defunded the position in a bill the
892 President signed into law, the administration chose to make
893 an end run around Congress and simply continue the public
894 advocate position through just a simple name change. The
895 purpose of H.R. 3732 is to prevent this administration from
896 once again showing disdain for Congress by simply changing
897 the name and continuing the function of the advocate.

898 The amendment does three things. In order to clarify
899 congressional intent to get rid of the advocate position
900 once and for all, the amendment clarifies that the bill's
901 prohibition applies to any position that is substantially

902 similar to the public advocate position. The amendment
903 removes the findings from the bill in order to narrowly
904 tailor the bill to the issue at hand, defunding the public
905 advocate position. And finally, it removes two unneeded
906 dates from the bill.

907 The President made a conscious decision to do exactly
908 the opposite of what Congress mandated. It was yet another
909 example of the President's contempt for his constitutional
910 duty to faithfully execute laws passed by Congress.

911 Whether it is through the abuse of so-called enforcement
912 priorities, the misuse of prosecutorial discretion or
913 deferred action where entire categories of unlawful
914 immigrants are allowed to remain in the United States, or
915 circumventing language intended to defund an administration
916 position, the President's actions go far beyond prioritizing
917 resources. His actions usurp the role of the legislative
918 branch, effectively rewriting the law and exceeding his
919 constitutional authority.

920 I urge my colleagues to support the amendment, and the
921 chair now recognizes -- for what purpose does the gentleman
922 from New York seek recognition?

923 Mr. Nadler. To speak on the amendment.

924 Chairman Goodlatte. The gentleman is recognized for 5
925 minutes.

926 Mr. Nadler. Thank you, Mr. Speaker -- Mr. Chairman,
927 rather.

928 This amendment illustrates the absurdity of the bill and
929 makes the bill not worse, but completely incomprehensible.

930 The bill says you can't do -- I forget exactly the
931 phraseology. You can't establish an office "the same as."
932 The amendment says "similar to." What does "similar to"
933 mean? How can any court interpret what "similar to" means?

934 So I can't even see a court beginning to apply this
935 statute if it should pass, which it never will pass. The
936 Senate won't look at this stupidity. But if it said, even
937 if it should pass, I can't see a court beginning to
938 interpret "similar to."

939 So an office is established that does various things not
940 the same as a different office, but someone argues it is
941 similar to that office. How close is "similar to"? I defy
942 anybody to know what this means.

943 I oppose the amendment because I oppose any amendment

944 that seeks to put language in the law that is meaningless or
945 incomprehensible and that poses an impossible question for
946 the courts. I will oppose the bill on its merits when it
947 comes time to oppose the bill. But I simply say this would
948 make the bill totally incomprehensible, not to say useless -
949 - it is already useless -- but totally incomprehensible and
950 unenforcible.

951 I yield back.

952 Ms. Lofgren. Mr. Chairman?

953 Chairman Goodlatte. Who seeks recognition?

954 Ms. Lofgren. Mr. Chairman?

955 Chairman Goodlatte. For what purpose does the
956 gentlewoman from California seek recognition?

957 Ms. Lofgren. To strike the last word.

958 Chairman Goodlatte. The gentlewoman is recognized for 5
959 minutes.

960 Ms. Lofgren. The following are quotes from community
961 outreach offices in U.S. law enforcement organizations. Can
962 members on the panel distinguish between the organizations
963 being described?

964 First, "Enforcement is a community-based enterprise.

965 The community must be involved in accomplishing the agency's
966 enforcement mission." Or, "The department is committed to
967 recognizing the merits of community involvement and seeks to
968 achieve partnerships with the community it serves."

969 And, "As enforcement officers, our interaction and
970 partnerships with the community is important." And, "The
971 community service officer is a liaison to the community, is
972 empowered to tie neighborhoods together to build a
973 generation."

974 These all sound pretty liberal, right? Well, guess
975 which one of these quotes can be attributed to the Federal
976 immigration agencies that some of our colleagues are
977 accusing of failing to enforce the law? None. Each of
978 these quotes comes from the Kerrville Police Department in
979 Congressman Lamar Smith's conservative district in Texas.

980 I had my staff do some research, and it turns out that
981 almost every major law enforcement agency in the country at
982 the Federal, State, and local level has some sort of
983 community outreach or liaison office. It is true of the
984 FBI, the DEA, and the ATF, as well as U.S. attorney's
985 offices across the country.

986 It is also true of the Harrisonburg Police Department in
987 Chairman Goodlatte's district, the Orange County Sheriff's
988 Department in Representative Issa's district, the Ames
989 Police Department in Congressman King's district, and just
990 about every district represented by a member of this
991 committee. There is nothing offensive or out of the
992 ordinary about a law enforcement agency having an office to
993 build relationships with the community in which it enforces
994 the law. It is simply smart policing.

995 But for some reason when we are talking about
996 immigration in this committee, everything seems to get
997 turned on its head. The bill we are considering today would
998 defund the position, if it is even understood by the courts,
999 of Assistant Director for Custody Programs and Community
1000 Outreach. It is currently filled by a gentleman hired by
1001 ICE as an attorney and policy analyst when President George
1002 W. Bush was President of the U.S. This position is not
1003 filled by a political appointee, but a career civil servant.

1004 So the first question I have for my colleagues is
1005 whether any of them have asked to meet with this civil
1006 servant before supporting a bill attacking the work he does

1007 for our country? Second question is whether we actually
1008 understand the critical role that he and his staff play in
1009 protecting individuals in ICE custody from physical injury
1010 and other types of harm?

1011 If the answer to either of these questions were in the
1012 affirmative, I would guess that the Members would oppose the
1013 bill.

1014 Aside from serving as the agency's liaison to immigrant
1015 communities and advocacy organizations, the office is
1016 responsible for overseeing certain critical reforms to
1017 detention and enforcement operations, as well as operating a
1018 telephone hotline to receive and refer serious complaints.

1019 Through these efforts, the office serves as an important
1020 check in the system to prevent individuals in ICE custody
1021 from being sexually assaulted, to ensure that individuals in
1022 ICE custody with serious medical conditions receive care, to
1023 prevent minor children, including U.S. citizen children,
1024 from being left unattended due to enforcement operations, to
1025 ensure that ICE allows detained immigrants to participate in
1026 hearings and other matters to prevent their parental rights
1027 from being terminated unjustly, and to prevent the

1028 inappropriate detention and removal of United States
1029 citizens.

1030 I believe that each of us should support these goals,
1031 and for this reason alone, we should all oppose H.R. 3732.
1032 There is no question that if this bill became law and the
1033 Office of Custody Programs and Community Outreach was
1034 eliminated, U.S. citizens, as well as immigrants and
1035 immigrant communities, would suffer. There would be one
1036 less check in the system to prevent rape or sexual assault.
1037 There would be one less check in the system to ensure that
1038 children are cared for even when their parents are taken
1039 into custody. And one less check to prevent American
1040 citizens from being unjustly detained and removed.

1041 We should be taking up reform of the immigration laws
1042 today, not a bill that actually promotes sexual assault in
1043 custody of ICE. I yield back --

1044 Mr. Conyers. Would the gentlelady yield?

1045 Ms. Lofgren. I would yield any time I have remaining,
1046 Mr. Chairman.

1047 Mr. Conyers. I merely want to associate myself with
1048 your remarks and commend you for the excellent evaluation

1049 that you made of this measure thus far.

1050 Ms. Jackson Lee. Mr. Chairman?

1051 Chairman Goodlatte. For what purpose does the gentleman
1052 from South Carolina seek recognition?

1053 Mr. Gowdy. Move to strike the last word, Mr. Chairman.

1054 Chairman Goodlatte. The gentleman is recognized for 5
1055 minutes.

1056 Mr. Gowdy. I would yield to the gentleman from
1057 Virginia, the chairman of the full committee, Mr. Goodlatte.

1058 Chairman Goodlatte. I thank the gentleman for yielding,
1059 and I would like to say to my colleagues on the other side
1060 that this is about the President's duty to faithfully
1061 execute the law. As much as there is welcome debate on the
1062 issue of what is appropriate immigration policy in the
1063 United States, and this committee has spent a great deal of
1064 time on that and will continue to spend a great deal of time
1065 on that issue in the future and hopefully get to addressing
1066 all of the major areas of immigration reform that are
1067 needed, this bill addresses a problem of the Congress voting
1068 the law and the President not enforcing it.

1069 In fact, H.R. 3547, the omnibus appropriations bill, in

1070 Section 558 had this language. "None of the funds made
1071 available in this act may be used to provide funding for the
1072 position of public advocate or a successor position within
1073 U.S. Immigration and Customs Enforcement."

1074 Now the gentlewoman from California and others are
1075 entitled to their judgment about whether or not that
1076 position is meritorious, but the Congress ruled on it and
1077 passed by a vote of 359 to 67, including 193 Democrats
1078 voting for it. Every Judiciary Committee Democrat voted for
1079 it, with the exception of the gentleman from Puerto Rico who
1080 can't vote on the floor because he is a delegate. And that
1081 is the law that the President signed into law.

1082 And we are simply passing legislation to make it clear
1083 that the President has not enforced the law, that he has
1084 found a way around the law, and we are responding to that
1085 appropriately to ensure that the President does enforce the
1086 will of the Congress, which has the constitutional authority
1087 under Article I to pass legislation, including legislation
1088 eliminating this position, which has not been eliminated.

1089 So I would yield back to the gentleman from South
1090 Carolina and urge my colleagues to support the amendment.

1091 Mr. Nadler. Mr. Chairman?

1092 Ms. Jackson Lee. Mr. Chairman?

1093 Chairman Goodlatte. For what purpose does the
1094 gentlewoman from Texas seek recognition?

1095 Ms. Jackson Lee. I thank the gentleman, and I thank the
1096 gentleman for his --

1097 Chairman Goodlatte. The gentlewoman is recognized for 5
1098 minutes.

1099 Ms. Jackson Lee. And I thank you so very much, Mr.
1100 Chairman, and I ask to be recognized. I ask unanimous
1101 consent to be recognized.

1102 Let me procedurally respond to your very effective and
1103 detailed explanation. As the chairman knows, the
1104 legislation was included as a rider. I am only saying that
1105 not to say that it was not signed into law, but to defend my
1106 fellow Democrats who most of whom I know, and maybe many of
1107 my friends on the other side of the aisle, would not have
1108 irrationally supported the legislation.

1109 We now come to glaringly act irrationally in this
1110 committee, and the reason why I say that is I think the
1111 chairman and with his leadership, along with the ranking

1112 member, remember the years that we went through. In the
1113 early years, I worked with my colleague Congresswoman
1114 Lofgren on the conditions in some of our detention centers
1115 where we collaborated with other agencies not out of
1116 promoting illegal immigration, but to clean up some of the
1117 horrific issues that occurred in detention centers.

1118 Not to the blame of our ICE officers, but to the lack of
1119 attention of the Federal Government as it related to
1120 families and children or as it related to women, pregnant
1121 women. All of that was corrected when the horrors of the
1122 conditions of those detention centers. Regardless of
1123 whether people were in a status of illegality or not legal,
1124 we, as a humanitarian country, felt it was full of horrors
1125 to put nonconvicted and noncriminal acts, people who were
1126 charged with simple violation of immigration laws, if you
1127 will, in conditions that were unmerciful.

1128 So, first of all, we should, in this committee, do good.
1129 We should not run toward doing harm. And what this
1130 legislation does is it does harm because it takes away a
1131 performance or a duty that is crucial to the humane system
1132 that deals with people who are here in this country through

1133 no fault of their own or through non -- that they have no
1134 interest in doing harm to this country.

1135 So I would make the point that we have a lot of
1136 shenanigans on the floor of the House and the floor of the
1137 Senate. This was a rider, and we were voting for the
1138 omnibus appropriations. We were doing our duty. We were
1139 being responsible. We were voting to keep the Government
1140 open. And along comes this underhanded, undercover rider
1141 that people had to suffer, hold their nose to ensure that
1142 they could pass an omnibus bill.

1143 Now to the bill itself, let me say that the President is
1144 in good order because ICE is funding a Deputy Assistant
1145 Director of Custody Programs and Community Outreach. I
1146 would take this matter to the courts to determine whether or
1147 not a public advocate is the same thing as the Deputy
1148 Assistant Director of Custody Programs and Community
1149 Outreach.

1150 They are different words. And as a lawyer, I can make a
1151 very strong case that they are two distinctive positions,
1152 and they are not a successor position. I could make the
1153 argument that a custody issue is holding people in custody,

1154 and therefore, that this is not a successor.

1155 But I am going to say that I would like to be part of a
1156 Congress that does good and not do harm. To put this
1157 legislation on the floor or to put it here in committee is
1158 to do enormous harm, enormous harm. It is to leave exposed
1159 vulnerable persons who have no other way of communicating.
1160 ICE officers are doing their legal work as it relates to the
1161 deportation process or the internal enforcement of the laws.

1162 This position is to give someone concern over the
1163 conditions of those who are now incarcerated, detained, give
1164 them some place to have a response or their family members
1165 to have a response, or to take care, as my colleague has
1166 said, a pregnant person, a child who is in need of emergency
1167 medical care, that there is some framework, some
1168 infrastructure.

1169 When are we going to realize that our democracy
1170 separates from Third World countries that throw people into
1171 dungeons who we never see again? Are we going to be North
1172 Korea, where the incarcerated person detained from
1173 California is now in a medical crisis? He had no one to
1174 call in North Korea except his family members who were

1175 crying for his relief.

1176 Chairman Goodlatte. The time of the gentlewoman has
1177 expired.

1178 Ms. Jackson Lee. I would make the argument, Mr.
1179 Chairman, this is a bad bill. The President did the right
1180 thing. There is no undermining of our authority. It is a
1181 completely different position, and it is not a successor
1182 position.

1183 I yield back my time.

1184 Chairman Goodlatte. The time of the gentlewoman has
1185 expired.

1186 Mr. Cohen. Mr. Chairman?

1187 Chairman Goodlatte. For what purpose does the gentleman
1188 from Tennessee seek recognition?

1189 Mr. Cohen. Thank you, Mr. Chairman. I just wanted to
1190 clarify --

1191 Chairman Goodlatte. The gentleman is recognized for 5
1192 minutes.

1193 Mr. Cohen. Thank you. It won't take quite that long,
1194 Mr. Chairman.

1195 But you mentioned how all the Democrats except for maybe

1196 two voted for this bill. But as Ms. Jackson Lee, I think
1197 she pointed out, this was the bill that was the budget that
1198 kept the country going, that those of us who voted for it
1199 kind of -- Speaker Boehner got most of the Republicans, but
1200 not all of them, to kind of work together for the progress
1201 of the country. And this was kind of thrown in that bill.

1202 Is that the same bill we are talking about, where this
1203 really wasn't a bill, but this was part of another bill and
1204 kind of like a speck of water in the ocean? Is that
1205 accurate, Mr. Chairman?

1206 Chairman Goodlatte. Would the gentleman yield?

1207 Mr. Cohen. Yes, sir.

1208 Chairman Goodlatte. The gentleman is correct. This is
1209 legislation that was agreed upon between the House and the
1210 Senate, the Senator Majority Leader Harry Reid, and signed
1211 into law by the President of the United States, and it has a
1212 provision eliminating a position that has not been
1213 eliminated.

1214 Mr. Cohen. And didn't, when the Republicans took over,
1215 didn't Speaker Boehner say something about a new day and we
1216 weren't going to have bills with miscellaneous, unrelated

1217 legislation attached to other legislation? Everybody would
1218 be voted on so the public would --

1219 Chairman Goodlatte. Would the gentleman yield?

1220 Mr. Cohen. Yes, sir.

1221 Chairman Goodlatte. This is a spending bill, and the
1222 spending measure in the bill was whether or not this
1223 particular position would be funded in the omnibus
1224 appropriations. So the gentleman can draw his own
1225 conclusions about the appropriateness of it, but it was a
1226 spending provision in a spending bill.

1227 Mr. Cohen. Yes, sir. Well, thank you for the
1228 clarification.

1229 But I will draw my own conclusion. This was not in
1230 keeping with what Speaker Boehner had announced, which did
1231 make a lot of sense to me that we would vote on things, and
1232 people would know we voted for this or not for this. And we
1233 wouldn't have little things thrown in that you had to vote
1234 for for the overall common good of the country and keeping
1235 the country going and getting back to regular order and
1236 having a budget.

1237 And so, it is really not fair to suggest that we all

1238 voted for it and now that our position is somehow
1239 inconsistent because we had a responsibility to help Speaker
1240 Boehner move this country forward. And thank God, almost
1241 all the Democrats did in what was a good thing.

1242 And this was just, you know, kind of contrary to what he
1243 is doing, and he has, unfortunately, done this at other
1244 times. But the American public doesn't really get it
1245 straight. But I think they will get it straight now that we
1246 didn't really vote for this concept. We voted for keeping
1247 America and the budget going, getting back to regular order,
1248 trying to be a bit bipartisan, working for the Senate, doing
1249 something that was kind of unusual, that we were
1250 cooperative, unlike the way we are normally.

1251 Ms. Jackson Lee. Would you yield for a moment?

1252 Mr. Cohen. I would yield to the lady from Texas.

1253 Ms. Jackson Lee. Yes, let me emphasize what the
1254 gentleman has said because, again, let me be very clear. It
1255 was not that Members did not know what they were voting for
1256 in terms of the bill. The bill was to fund the Government.

1257 Be very clear, this was a rider, a poison pill that was
1258 glaringly wrong. But at the sacrifice of making sure the

1259 doors of the Government were funded, then there was a coming
1260 together to vote for that legislation. That is the sad part
1261 of the legislative process when poison pills are added.

1262 Let me say this, that if this was a good idea, if this
1263 was a budget saver, then why don't we eliminate all of the
1264 advocates in all of the agencies because all agencies have
1265 some form of advocacy because Congress, in its wisdom, felt
1266 that this was a good decision to give someone for the
1267 constituents who pay taxes to be able to reach. That is
1268 what this is all about.

1269 And so, now we have a law that snuck into an omnibus
1270 bill that undermines the citizens' right to be able to
1271 participate and to be represented by an advocate of sorts.

1272 Mr. Cohen. If I can reclaim my time? Thank you.

1273 Mr. Nadler. Mr. Chairman?

1274 Chairman Goodlatte. Would the gentleman -- would the
1275 gentleman yield?

1276 Mr. Cohen. I would like to ask you a question.

1277 Chairman Goodlatte. Okay. And I will ask you one after
1278 that if you will yield to me for that purpose.

1279 Mr. Cohen. I didn't do too good with this on Steve

1280 Kornacki, but I will try to answer a question. But the
1281 issue here is, was this a rider to the budget bill or was
1282 this a rider to the end the Government shutdown bill?

1283 Chairman Goodlatte. This was the --

1284 Mr. Cohen. This was when the Republicans shut down the
1285 Government for 16 days?

1286 Chairman Goodlatte. This was the omnibus appropriations
1287 bill passed at the beginning --

1288 Mr. Cohen. So it wasn't when you all shut down the
1289 Government for 16 days?

1290 Chairman Goodlatte. The question that I -- would the
1291 gentleman yield?

1292 Mr. Cohen. Yes, sir.

1293 Chairman Goodlatte. So my question to the gentleman is
1294 this. There are thousands of items, obviously, in an
1295 omnibus appropriations bill that fund various aspects of the
1296 Government. Do you believe that the President of the United
1297 States has the authority to pick and choose any item?

1298 I mean, there are lots of things in that budget you
1299 voted for that you like. Obviously, you don't like this
1300 provision, but you must have voted for it because you liked

1301 a lot of other provisions. If the President chose not to
1302 follow the spending requirements of the Congress in the
1303 other areas, do you think the President has the authority to
1304 pick and choose amongst all of the provisions in the bill?

1305 Mr. Cohen. I think the rest of the bill was saying what
1306 he could spend, telling him to spend money in certain areas.
1307 And I think this was probably the only area where it said he
1308 couldn't spend money.

1309 Ms. Lofgren. Would the gentleman yield?

1310 Mr. Cohen. Yes, I would yield to the lady from
1311 California.

1312 Ms. Lofgren. I would like to note, as I mentioned, when
1313 we had our brief hearing on this, that the administration
1314 precisely complied with the provision in the budget bill,
1315 the rider. It was ineptly drafted, perhaps because the
1316 author is a new member, I don't know. But she drafted a
1317 narrow provision that was complied with.

1318 So to blame the administration for poor drafting I think
1319 is a bit much. And I thank the gentleman for yielding.

1320 Mr. Cohen. And I would like to whatever --

1321 Chairman Goodlatte. The time of the gentleman has

1322 expired.

1323 Mr. Cohen. I just wanted to defend my colleague from

1324 Tennessee. She is a very nice lady.

1325 Mr. Cicilline. Mr. Chairman?

1326 Chairman Goodlatte. I thank the gentleman.

1327 For what purpose does the gentleman from Rhode Island

1328 seek recognition?

1329 Mr. Cicilline. Mr. Chairman, I seek time in opposition.

1330 Chairman Goodlatte. The gentleman is recognized for 5

1331 minutes.

1332 Mr. Cicilline. Thank you, Mr. Chairman.

1333 I am new to this committee, but it seems to me this is

1334 an opportunity to fix something. And rather than focusing

1335 on the artful way in which the majority claims that the

1336 President worked or the administration worked around this,

1337 this is an occasion for us to actually fix it and reject

1338 this amendment and reject the underlying bill.

1339 I served for 8 years as Mayor of Providence before I

1340 came to Congress, and I am very proud that during my time,

1341 we had the lowest crime rate the city had in 40 years. And

1342 if you ask my police chief how did we accomplish that, he

1343 will tell you that it wasn't any special weapons system. It
1344 wasn't any special electronic surveillance system. But it
1345 was community policing, relationships between law
1346 enforcement and members of the community built on trust,
1347 trust on both sides. And it was the single most powerful
1348 tool in reducing crime in the City of Providence.

1349 Similarly, that kind of effort is underway in the
1350 Immigration Service, and we should be promoting the
1351 development of strong relationships between the Government
1352 and community. It makes them a more effective agency of
1353 Government, and it is a very, very important tool.

1354 And so, I hope rather than playing games with this
1355 notion of it wasn't a bill, it was a bill, let us actually
1356 do what is best for the American people, and that is to be
1357 sure that this function is being provided. And I certainly
1358 applaud the administration for figuring out a way, as the
1359 congresswoman from California said, consistent with the
1360 legislation to work around this, to be sure that this vital
1361 function is being performed by the Immigration and
1362 Naturalization Service.

1363 But this gives us an opportunity to fix it, to reject

1364 the bill, reject the amendment, allow the agency to do this
1365 important work which will enhance the effectiveness of the
1366 agency, protect important civil rights at issue. And with
1367 that, I urge my colleagues to vote against this amendment
1368 and against the underlying bill.

1369 Mr. Conyers. Would the gentleman yield?

1370 Mr. Cicilline. Of course. It would be my pleasure.

1371 Mr. Conyers. I want to commend the gentleman on behalf
1372 of a number of us here on the committee. Because for your
1373 first wading out into the area of debate on this measure,
1374 you have acquitted yourself remarkably well for your first
1375 excursion.

1376 I thank you so much.

1377 Mr. Cicilline. Thank you.

1378 Mr. Deutch. Mr. Chairman?

1379 Chairman Goodlatte. For what purpose does the gentleman
1380 from Florida seek recognition?

1381 Mr. Deutch. Move to strike the last word.

1382 Chairman Goodlatte. The gentleman is recognized for 5
1383 minutes.

1384 Mr. Deutch. I yield to Mr. Nadler of New York.

1385 Mr. Nadler. I thank the gentleman for yielding.

1386 Mr. Chairman, this amendment really brings up two
1387 issues, two separate issues. One, the policy issue
1388 underlying Congresswoman Black's rider, which was, from my
1389 point of view, an obnoxious rider and wrong. And we have
1390 debated, we have discussed the merits.

1391 But second of all, this is brought up in the context of
1392 a bill that seeks to excoriate the President for his alleged
1393 misuse of power. There was no misuse of power here. What
1394 there was, was a sloppy drafting error by the gentlewoman
1395 from Tennessee when she drafted an amendment that was
1396 meaningless in terms of what she wanted to do.

1397 She drafted an amendment that said, "None of the funds
1398 made available by this act may be used to provide funding
1399 for the position of public advocate within the U.S.
1400 Immigration and Customs Enforcement." She didn't say none
1401 of the funds made available may be used to do this or that
1402 or the other thing. None of the funds made available may be
1403 used to do these functions. She simply eliminated a title.

1404 I submit that the reason that the administration didn't
1405 object at the time, the reason the Senate didn't object is

1406 they took one look at it, and they said, oh, this is
1407 laughable. It won't -- it won't impede our ability to do
1408 what we want in any way. So, to heck with it.

1409 Because precisely they knew that the amendment didn't do
1410 anything other than eliminate a title. And that is all it
1411 does by its terms. There is nothing wrong with the
1412 administration saying -- doing exactly what it did. They
1413 eliminated a title. They took the functions or some of the
1414 functions, which were not prohibited by the amendment, and
1415 they gave it to a different office.

1416 The amendment did not say you can't do this or that, and
1417 the administration thought that doing this and this, namely
1418 the things we have been talking about, are useful things to
1419 do, which I agree with, and so they continued doing them in
1420 complete compliance with the law, in complete compliance
1421 with the amendment.

1422 Now the proper -- the proper resolution of this issue,
1423 if you think there is an issue, is to teach Congresswoman
1424 Black how to write an effective amendment.

1425 Chairman Goodlatte. Would the gentleman yield?

1426 Mr. Nadler. Yes, I would.

1427 Chairman Goodlatte. Would the gentleman from Florida --
1428 the gentleman from Florida controls the time. Would he
1429 yield to me to respond to the gentleman from New York? I
1430 think he has abdicated his control.

1431 Mr. Deutch. I yield.

1432 Chairman Goodlatte. I thank the gentleman for yielding.

1433 I would just say to the gentleman from New York that the
1434 language of Section 558 of the omnibus, H.R. 3547, is as
1435 clear as a bell, and it covers what the administration's
1436 obligation is. And it is more than just a title change. It
1437 says none of the funds made available in this act may be
1438 used to provide funding for the position of public advocate
1439 or a successor position within U.S. Immigration and Customs
1440 Enforcement.

1441 That clearly contemplates not just the title, but the
1442 function of the position so that if you change the title and
1443 created a "successor position," you would also be defunding
1444 it.

1445 Mr. Nadler. Reclaim your time.

1446 Mr. Deutch. Reclaiming my time and yielding to Mr.
1447 Nadler.

1448 Mr. Nadler. Thank you.

1449 That doesn't change the point. That doesn't change the
1450 point. A successor position. It has nothing to do with a
1451 successor position. It has to do with functions. The
1452 functions are perfectly legal functions, and they can be
1453 done by anybody with any title other than the title in the
1454 amendment that they may choose.

1455 And all the administration has done is to set up a
1456 different office with similar -- not identical, by the way,
1457 but similar functions. Some of the functions are the same.
1458 Some are different. And there is nothing wrong with that
1459 under the law.

1460 Now if you want to say that those functions shouldn't be
1461 done, then an amendment should be drafted to say none of the
1462 funds expended shall be used for the following functions --
1463 to liaise with the community, to help the police department.
1464 Whatever it may be. But that is not what the law said.

1465 Now that would be if you actually wrote what you are
1466 trying to prevent doing, it would look pretty silly. It
1467 would look even sillier than it does. None of the funds
1468 appropriated shall be used to do the community liaison

1469 function that every police department, that almost every
1470 agency does. All right. Then you could debate it on the
1471 merits.

1472 But this issue is really that issue. It is not an issue
1473 of the President or the agency misusing its power because
1474 they have not disobeyed the statute or the amendment in any
1475 respect whatsoever. They have obeyed the literal meaning of
1476 the statute. If the problem is with the statute or the
1477 drafting, that is not their problem. It is the problem with
1478 the statute or the drafting.

1479 This bill is addressing a nonexistent problem. I yield
1480 back.

1481 Chairman Goodlatte. The time of the gentleman has
1482 expired.

1483 Mr. Johnson. Mr. Chairman?

1484 Chairman Goodlatte. Who seeks recognition? For what
1485 purpose does the gentleman from Georgia seek recognition?

1486 Mr. Johnson. Mr. Chairman, I rise in opposition to --

1487 Chairman Goodlatte. The gentleman is recognized for 5
1488 minutes.

1489 Mr. Johnson. The notion of protecting persons held in

1490 custody by ICE from a culture or from institutionalized
1491 sexual assault is a good thing. And by providing a
1492 mechanism whereby persons who are being detained can --

1493 Mr. Labrador. Mr. Chairman, I believe he is out of
1494 order. I think he is speaking on the bill and not on the
1495 amendment.

1496 Mr. Johnson. No, I am speaking on the amendment, Mr.
1497 Chairman. I think I have a right to be heard.

1498 Chairman Goodlatte. The gentleman has the right to be
1499 heard and may continue.

1500 Mr. Johnson. Thank you.

1501 So it is a good thing when we offer persons held in
1502 custody by ICE or any other enforcement agency the ability
1503 to know, first of all, that they have a right not to be held
1504 under a system whereby they are subject to sexual abuse, and
1505 two, they need to have a place or a mechanism through which
1506 reports can be made and complaints can be made about sexual
1507 assault taking place in these institutions.

1508 We all know that sexual assault does take place in
1509 prisons. It does take place in jails. It does take place
1510 in detention facilities run by ICE. And so, it is a good

1511 thing to have a mechanism whereby these practices can be
1512 rooted out and persons who are being detained can be
1513 protected.

1514 And that is what this -- that is what this amendment
1515 this goes against. It supports the cutting of the
1516 administration's ability to perform that very just and good
1517 purpose, and it is really the most heartless and cruel anti-
1518 Christian piece of legislation that I have had the
1519 opportunity to vote against.

1520 And I am proud to be able to speak against this. It is
1521 cruel. It is unusual. It is shameful that we would deny
1522 persons detained the ability to report a claim of sexual
1523 assault. And this amendment does just that, and for that
1524 reason, I am opposed to this amendment.

1525 Mr. Conyers. Would the gentleman yield?

1526 Mr. Johnson. I will.

1527 Mr. Conyers. I would like to know if this prevention of
1528 various policies and programs includes a national telephone
1529 hotline as well?

1530 Mr. Johnson. It does. It does.

1531 Mr. Conyers. And I think that is a very dangerous

1532 elimination of possibilities for getting any of these
1533 problems into the public. We need these reform initiatives
1534 so much, and I think they are designed to protect immigrants
1535 from harm, as you have so eloquently stated. And I join you
1536 in your effort to make sure that we don't defund an office
1537 of this importance in terms of ensuring physical safety of
1538 immigrants in ICE custody.

1539 Mr. Johnson. Mr. Chairman, I believe that that is who
1540 we are. This is who we are as a nation. This is who we are
1541 as a people. This legislation goes against those norms.
1542 And it is, quite frankly, embarrassing that we would be
1543 committing this much of the taxpayers' time to pursue such a
1544 mean-spirited and really personal -- this is personally
1545 directed at the current administration to try to clip the
1546 wings of the current administration from doing what is just,
1547 what is good, what is just, what is really a part of
1548 America's values to protect those who are in need of
1549 protection. This is what makes us the kind of nation that I
1550 am proud to be a part of.

1551 And I just simply cannot stand here without pointing out
1552 the fallacy of trying to clip the President's wings. But in

1553 the process, you are clipping the ability of people to
1554 report claims of sexual assault while they are being held in
1555 custody.

1556 Chairman Goodlatte. The time of the gentleman has
1557 expired. Who seeks recognition?

1558 Mr. Bachus. Mr. Chairman?

1559 Chairman Goodlatte. Oh, the gentleman -- for what
1560 purpose does the gentleman from Alabama seek recognition?

1561 Mr. Bachus. To speak.

1562 Chairman Goodlatte. The gentleman is recognized for 5
1563 minutes.

1564 Mr. Bachus. I want to clarify something. The gentleman
1565 from Georgia, you are speaking of the underlying
1566 legislation, not Mr. Goodlatte's amendment, right?

1567 Mr. Johnson. No, that is incorrect. I am speaking in
1568 opposition to the amendment.

1569 Mr. Bachus. The amendment doesn't --

1570 Mr. Johnson. And I will have other comments in
1571 opposition to the --

1572 Mr. Bachus. But the amendment only strikes part of the
1573 underlying bill. It narrows the scope of the --

1574 Mr. Johnson. Well, you are correct, Mr. Chairman. It
1575 tries to make it a little better.

1576 Mr. Bachus. Yes. So, I mean, so you are speaking -- I
1577 think what you are directing, your remarks are not at the
1578 amendment that is up, which, actually, if I understand your
1579 reasoning, would move the bill in a positive direction.

1580 Mr. Johnson. Well, I beg to differ.

1581 Ms. Lofgren. Would the gentleman yield?

1582 Mr. Bachus. I would yield.

1583 Mr. Johnson. I oppose a lessening of the degree of
1584 poison that is in the bill because I disagree with --

1585 Mr. Bachus. So you oppose actually modifying the bill
1586 --

1587 Mr. Johnson. To make it better?

1588 Mr. Bachus. -- to make it better.

1589 Mr. Johnson. I don't really think that it does make it
1590 better.

1591 Ms. Lofgren. Would the gentleman yield?

1592 Mr. Bachus. But you oppose it even though it makes it
1593 better.

1594 Ms. Lofgren. Would the gentleman yield?

1595 Mr. Johnson. No, I disagree with the notion --

1596 Mr. Bachus. Yes, the gentlelady from California?

1597 Ms. Lofgren. Because I think it is incorrect to
1598 suggestion that the amendment narrows it because it changes
1599 "the same," which would seem to be identical, to become
1600 "similar to," which would be broader. So I think it
1601 actually broadens the underlying bill.

1602 But I thank the gentleman for yielding.

1603 Mr. Bachus. It changes the date of the enactment to
1604 where it would only be enacted -- it postpones that. It
1605 also strikes some of the findings, which you all have said
1606 that you find that concerns you. So I just don't see any
1607 way that this is not an improvement --

1608 Mr. Johnson. Would the gentleman yield?

1609 Mr. Nadler. Would the gentleman yield?

1610 Mr. Johnson. Would the gentleman yield?

1611 Mr. Nadler. Would the gentleman yield?

1612 Mr. Bachus. Yes.

1613 Mr. Johnson. Well, I would respond that a lesser degree
1614 of poison does not remove the fact that --

1615 Mr. Bachus. Oh, I understand, and that is why I am

1616 saying that when you are criticizing the underlying bill, I
1617 am not -- you are criticizing that. But the chairman --
1618 Mr. Johnson. Well, Mr. Chairman --
1619 Mr. Nadler. Would the gentleman --
1620 Mr. Johnson. I really don't want to --
1621 Mr. Bachus. But the chairman's amendment, I have --
1622 Chairman Goodlatte. The gentleman from Alabama controls
1623 the time.
1624 Mr. Nadler. Would the gentleman yield?
1625 Mr. Bachus. But the chairman's amendment actually makes
1626 the bill -- I mean, and I have read it. I mean, to me, it
1627 is an improvement. Even if you take everything you say is
1628 true, it is an improvement.
1629 Mr. Nadler. Would the gentleman yield?
1630 Mr. Johnson. Mr. Chairman, it is semantics and --
1631 Mr. Bachus. I will, Mr. Nadler. I will yield.
1632 Mr. Nadler. Would the gentleman yield to me?
1633 Mr. Johnson. -- on the problem at hand, which is the
1634 underlying legislation.
1635 Mr. Nadler. Would the gentleman yield to me?
1636 Mr. Bachus. Okay. Thank you.

1637 Mr. Nadler. Thank you. I thank the gentleman for
1638 yielding.

1639 I agree with the gentlelady from California. This
1640 doesn't improve the bill. It makes it worse. The striking
1641 the findings is, frankly, irrelevant one way or the other.

1642 What is key -- the only thing -- the only -- excuse me?

1643 Mr. Bachus. The only --

1644 Mr. Nadler. You are not on the mike, but I can hear you
1645 anyway. The key point is what the bill does.

1646 Mr. Bachus. Right.

1647 Mr. Nadler. And what the bill does is say you can't
1648 have a position the same as this other position. What the
1649 amendment does is say similar to this other position, which
1650 considerably broadens the bill. It makes it, as I said
1651 earlier, impossible to define. So that is one problem.

1652 But clearly "similar to" is much broader than "the same
1653 as." What it exactly means, we don't know. But it broadens
1654 the bill. And if you don't like the bill, which I think
1655 most of us on this side don't, it makes it worse for that
1656 reason, not better.

1657 I thank the gentleman for yielding.

1658 Mr. Bachus. Well, I am just sort of sensitive to
1659 amendments that have been offered to try to make the bill,
1660 move it in the direction and that you all have also
1661 rejected. I just think that the comments about this
1662 particular amendment should be directed at the underlying
1663 bill, but that is just my personal opinion.

1664 I yield back the balance of my time.

1665 Chairman Goodlatte. The chair thanks the gentleman.

1666 Who seeks time?

1667 Mr. Labrador. Mr. Chairman?

1668 Chairman Goodlatte. For what purpose does the gentleman
1669 from Idaho seek recognition?

1670 Mr. Labrador. To strike the last word.

1671 Chairman Goodlatte. The gentleman is recognized for 5
1672 minutes.

1673 Mr. Labrador. Mr. Chairman, as I have been sitting here
1674 listening to the arguments from the other side, I actually
1675 sympathize with most of what I have heard coming from the
1676 other side. And in fact, I may, if they had a bill that
1677 gave money back to give, to have this position, I may
1678 actually vote for that bill.

1679 But the problem that we are having today is that we are
1680 debating about two different things. The other side is
1681 debating about whether we should have a public advocate or
1682 not, and they may be right or they may not be right that we
1683 should have a public advocate.

1684 But the problem is that the law says that we shouldn't
1685 have this position. And the President of the United States
1686 has --

1687 Ms. Lofgren. Will the gentleman yield?

1688 Mr. Labrador. I will not. The President of the United
1689 States and his administration have decided that they will
1690 just go around the law. The President is not a king. The
1691 President is the President of the United States, and he must
1692 follow the law, whether he agrees with the law or not. And
1693 one of the reasons we don't have immigration reform today is
1694 because this President refuses to enforce the law as it is
1695 written.

1696 I did not vote for the omnibus, which means that I did
1697 not vote for the underlying amendment that we are talking
1698 about here. However, it is the law of the land. And as
1699 long as it is the law of the land, it must be respected and

1700 it must be followed.

1701 And if we refuse to follow the law, the we refuse to be
1702 a republic and we refuse to be a nation of laws. And if
1703 that is what you want, then you refuse to have the country
1704 that we founded and the country that made us the greatest
1705 nation on the earth.

1706 Mr. Nadler. Would the gentleman --

1707 Mr. Labrador. So I may agree with you on the substance
1708 of your criticism. But that is not what this bill is about.
1709 This bill is about following the law. And if this President
1710 and this administration refuse to follow the law, then why
1711 should we write any other laws?

1712 And it saddens me that people in Congress, that Members
1713 of Congress are willing to give this President leeway in
1714 something as substantive as our Article I responsibilities.
1715 It is our responsibility to set the law, to make the law,
1716 and it is his job to execute the law. If he doesn't like
1717 it, he can come to Congress, and he can change it. And he
1718 can do that right now. And guess what? I might vote with
1719 you in that change in the law.

1720 But as long as he refuses to follow the law, I will not

1721 stand here and allow Members of Congress and Members of the
1722 legislative branch say that it is okay for the President of
1723 the United States to not follow the law just because you
1724 don't like the results of the law that was passed.

1725 Mr. Nadler. Will the gentleman now yield?

1726 Mr. Labrador. I will yield.

1727 Mr. Nadler. Thank you.

1728 I agree with just about everything the gentleman just
1729 said, with one exception. The President has followed the
1730 law in this instance. The law, again, simply says none of
1731 the funds made available may be used to provide funding --

1732 Mr. Labrador. Reclaiming my time, I disagree with you.
1733 Because what you are doing is you are just being a good
1734 lawyer. You are just saying --

1735 Mr. Nadler. Thank you.

1736 Mr. Labrador. -- the President is going to go through
1737 the law, and he is going to find an argument why he doesn't
1738 have to follow the law. I hope that the other side would
1739 hold this President accountable, like you tried to hold the
1740 Bush administration accountable.

1741 I thought it was wrong when the Bush administration did

1742 it. It is one of the reasons I came to Congress because I
1743 was sick and tired of Republicans not doing the right thing,
1744 and it saddens me. And I think you should be ashamed that
1745 you are not willing to do the same thing with your side and
1746 with your Democratic President.

1747 And with that, I yield back my time.

1748 Chairman Goodlatte. The gentleman yields back. Who
1749 seeks time?

1750 The question occurs on -- for what purpose does the
1751 gentlewoman from Washington seek recognition?

1752 Ms. DelBene. Move to strike the last word.

1753 Chairman Goodlatte. The gentlewoman is recognized for 5
1754 minutes.

1755 Ms. DelBene. Thank you, Mr. Chair.

1756 I would like to yield to Ms. Lofgren.

1757 Ms. Lofgren. Thank you. I thank the gentlelady.

1758 You know, I think there is a narrative here that needs
1759 to be addressed that Republicans are trying to make the case
1760 that somehow the President is not complying with the law and
1761 using this as an example, and it is simply not correct. You
1762 know, it was just said that we are being lawyers here.

1763 Well, I am sorry. That is what the law is about. You write
1764 a law, and it is interpreted by lawyers and courts.

1765 That is not new. That goes back to the founding not
1766 only of our republic, but British common law. Most of us
1767 here on the committee are, in fact, lawyers, and we are
1768 guided by the law.

1769 The fact that the administration complied with the law,
1770 but that the author of the rider was not precise in terms of
1771 how she wrote that rider is not the fault of the
1772 administration. Look in the mirror if there is a concern
1773 about what precisely the law required.

1774 I think to try and elevate this to an allegation of
1775 lawlessness is a disservice to the administration and really
1776 undercuts unfairly the faith that Americans do have and
1777 should have that the laws are faithfully executed.

1778 I do think that there are problems with the more precise
1779 version of the law, which we will get into, I addressed in
1780 my earlier statement and we will point out with a series of
1781 amendments. But to try and conflate compliance with a
1782 poorly drafted rider with lawlessness is unfair and
1783 unreasonable and I think a mistake.

1784 And I yield back to the gentlelady and thank her for
1785 yielding to me.

1786 Ms. DelBene. Thank you. I would like to yield the
1787 remainder of my time to Mr. Cicilline.

1788 Mr. Cicilline. I thank the gentlelady for yielding, and
1789 I would just associate myself with the remarks that
1790 Congressman Lofgren just made. But the best evidence that,
1791 in fact, the Administration complied with the law is that
1792 there is a new piece of legislation before us attempting to
1793 achieve what the first piece of legislation did not achieve.
1794 So I, too, think it is a totally erroneous narrative to
1795 suggest somehow the President or the Administration did not
1796 comply with the law. In fact, they did. The law was not
1797 well written and it allowed the function to be provided by
1798 another individual.

1799 So this notion of I would vote for it or I support the
1800 concept, but I want to send a message about lawlessness
1801 falls on, I think, deaf ears. It is just not true. I yield
1802 back my time.

1803 Mr. Labrador. Will the gentleman yield?

1804 Mr. Cicilline. I will not.

1805 Mr. Labrador. Will the gentlelady yield?

1806 Ms. DelBene. Mr. Cicilline --

1807 Mr. Labrador. Will the gentlelady yield?

1808 Ms. DelBene. I yielded the remainder of my time to Mr.

1809 Cicilline, so he --

1810 Chairman Goodlatte. The time of the gentlewoman has

1811 expired and been yielded back.

1812 For what purpose does the gentleman from California seek

1813 recognition?

1814 Mr. Issa. I move to strike the last word.

1815 Chairman Goodlatte. The gentleman is recognized for 5

1816 minutes.

1817 Mr. Issa. I would yield to the gentleman from Idaho.

1818 Mr. Labrador. Mr. Chairman, thank you for yielding.

1819 Just a quick comment. Obviously everybody is responding to

1820 my comment, so it obviously did not fall on deaf ears. That

1821 was all I wanted to say.

1822 [Laughter.]

1823 Mr. Issa. Thank you. And, Mr. Chairman, I will be

1824 brief. I was in another hearing next door, and I apologize

1825 for not being here for some of the comments. I will be

1826 voting for the manager's amendment and the underlying
1827 legislation to make clear that what the President is doing
1828 is wrong. Regardless of lawlessness, Speaker Boehner and in
1829 combination with all of us on the dais on this side said
1830 that we had principles on immigration that we wanted to
1831 together work on. And we are the committee of immigration
1832 reform.

1833 But I find myself frustrated, along with the gentleman
1834 from Idaho, the gentleman from South Carolina, and all of us
1835 working on immigration reform, because it is just this kind
1836 of wordsmithing of trying to get around intent that causes
1837 us to ask can we write legislation that is so air tight that
1838 under no circumstances can a president modify or fail to do
1839 excruciatingly exactly what we want. The answer is of
1840 course we cannot write that kind of legislation.

1841 Trust is part of what makes America work. The President
1842 has broken that trust on immigration in the minds of many
1843 Republicans, and it frustrates our ability to do immigration
1844 reform. Regaining trust, quite frankly, should be the
1845 President saying, you know, look, I know what the original
1846 intent is, therefore, I am going to do away with this

1847 office, not because I want to, but because I signed
1848 legislation where the intent was clear, and I am trying to
1849 circumvent it. It is that kind of behavior that I would
1850 hope that my colleagues on the other side of the aisle would
1851 realize this was a golden opportunity for the President to
1852 show that he was trustworthy based on the intent of a bill
1853 he signed.

1854 Ms. Lofgren. Would the gentleman yield?

1855 Mr. Issa. I thank the chairman for this and yield back.

1856 Mr. Johnson. Would the gentleman yield?

1857 Ms. Lofgren. Would the gentleman yield?

1858 Mr. Issa. I yield back.

1859 Chairman Goodlatte. The gentleman has yielded back.

1860 Who seeks time?

1861 [No response.]

1862 The question occurs on the amendment offered by the
1863 chair.

1864 All those in favor of the amendment, respond by saying
1865 aye.

1866 Those opposed, no.

1867 In the opinion of the chair, the ayes have it, and the

1868 amendment is agreed to.

1869 Ms. Lofgren. Recorded vote.

1870 Chairman Goodlatte. A recorded vote is requested, and

1871 the clerk will call the roll.

1872 Ms. Deterding. Mr. Goodlatte?

1873 Chairman Goodlatte. Aye.

1874 Ms. Deterding. Mr. Goodlatte votes aye.

1875 Mr. Sensenbrenner?

1876 [No response.]

1877 Ms. Deterding. Mr. Coble?

1878 [No response.]

1879 Ms. Deterding. Mr. Smith of Texas?

1880 [No response.]

1881 Ms. Deterding. Mr. Chabot?

1882 Mr. Chabot. Aye.

1883 Ms. Deterding. Mr. Chabot votes aye.

1884 Mr. Bachus?

1885 Mr. Bachus. Aye.

1886 Ms. Deterding. Mr. Bachus votes aye.

1887 Mr. Issa?

1888 Mr. Issa. Aye.

1889 Ms. Deterding. Mr. Issa votes aye.
1890 Mr. Forbes?
1891 Mr. Forbes. Aye.
1892 Ms. Deterding. Mr. Forbes votes aye.
1893 Mr. King?
1894 Mr. King. Aye.
1895 Ms. Deterding. Mr. King votes aye.
1896 Mr. Franks?
1897 Mr. Franks. Aye.
1898 Ms. Deterding. Mr. Franks votes aye.
1899 Mr. Gohmert?
1900 Mr. Gohmert. Aye.
1901 Ms. Deterding. Mr. Gohmert votes aye.
1902 Mr. Jordan?
1903 [No response.]
1904 Ms. Deterding. Mr. Poe?
1905 Mr. Poe. Yes.
1906 Ms. Deterding. Mr. Poe votes aye.
1907 Mr. Chaffetz?
1908 [No response.]
1909 Ms. Deterding. Mr. Marino?

1910 Mr. Marino. Yes.

1911 Ms. Deterding. Mr. Marino votes aye.

1912 Mr. Gowdy?

1913 Mr. Gowdy. Yes.

1914 Ms. Deterding. Mr. Gowdy votes aye.

1915 Mr. Labrador?

1916 Mr. Labrador. Yes.

1917 Ms. Deterding. Mr. Labrador votes aye.

1918 Mr. Farenthold?

1919 [No response.]

1920 Ms. Deterding. Mr. Holding?

1921 Mr. Holding. Aye.

1922 Ms. Deterding. Mr. Holding votes aye.

1923 Mr. Collins?

1924 Mr. Collins. Aye.

1925 Ms. Deterding. Mr. Collins votes aye.

1926 Mr. DeSantis?

1927 [No response.]

1928 Ms. Deterding. Mr. Smith of Missouri?

1929 Mr. Smith of Missouri. Aye.

1930 Ms. Deterding. Mr. Smith of Missouri votes aye.

1931 Mr. Conyers?
1932 Mr. Conyers. No.
1933 Ms. Deterding. Mr. Conyers votes no.
1934 Mr. Nadler?
1935 Mr. Nadler. No.
1936 Ms. Deterding. Mr. Nadler votes no.
1937 Mr. Scott?
1938 Mr. Scott. No.
1939 Ms. Deterding. Mr. Scott votes no.
1940 Ms. Lofgren?
1941 Ms. Lofgren. No.
1942 Ms. Deterding. Ms. Lofgren votes no.
1943 Ms. Jackson Lee?
1944 Ms. Jackson Lee. No.
1945 Ms. Deterding. Ms. Jackson Lee votes no.
1946 Mr. Cohen?
1947 Mr. Cohen. No.
1948 Ms. Deterding. Mr. Cohen votes no.
1949 Mr. Johnson?
1950 Mr. Johnson. No.
1951 Ms. Deterding. Mr. Johnson votes no.

1952 Mr. Pierluisi?

1953 Mr. Pierluisi. No.

1954 Ms. Deterding. Mr. Pierluisi votes no.

1955 Ms. Chu?

1956 Ms. Chu. No.

1957 Ms. Deterding. Ms. Chu votes no.

1958 Mr. Deutch?

1959 Mr. Deutch. No.

1960 Ms. Deterding. Mr. Deutch votes no.

1961 Mr. Gutierrez?

1962 [No response.]

1963 Ms. Deterding. Ms. Bass?

1964 [No response.]

1965 Ms. Deterding. Mr. Richmond?

1966 [No response.]

1967 Ms. Deterding. Ms. DelBene?

1968 Ms. DelBene. No.

1969 Ms. Deterding. Ms. DelBene votes no.

1970 Mr. Garcia?

1971 Mr. Garcia. No.

1972 Ms. Deterding. Mr. Garcia votes no.

1973 Mr. Jeffries?

1974 Mr. Jeffries. No.

1975 Ms. Deterding. Mr. Jeffries votes no.

1976 Mr. Cicilline?

1977 Mr. Cicilline. No.

1978 Ms. Deterding. Mr. Cicilline votes no.

1979 Chairman Goodlatte. The gentleman from North Carolina?

1980 Mr. Coble. Aye.

1981 Ms. Deterding. Mr. Coble votes aye.

1982 Chairman Goodlatte. Is there any member who has not

1983 voted who wishes to vote?

1984 [No response.]

1985 Chairman Goodlatte. The clerk will report.

1986 Ms. Deterding. Mr. Chairman, 16 members voted aye, 14

1987 members voted nay.

1988 Chairman Goodlatte. The ayes have it, and the amendment

1989 is agreed to. Are there any other amendments?

1990 Mr. Conyers. Mr. Chairman?

1991 Chairman Goodlatte. For what purpose does the gentleman

1992 from Michigan seek recognition?

1993 Mr. Conyers. I am pleased now to offer an amendment by

1994 myself and the gentlelady from California, Ms. Lofgren.

1995 Chairman Goodlatte. For what purpose does the gentleman
1996 from South Carolina seek recognition?

1997 Mr. Gowdy. I apologize for moving in a way that led you
1998 to believe that, Your Honor.

1999 [Laughter.]

2000 Chairman Goodlatte. The clerk will report the
2001 amendment.

2002 Ms. Deterding. Amendment to H.R. 3732, offered by Mr.
2003 Conyers and Ms. Lofgren, add at the end of the bill the
2004 following, "Section 4" --

2005 Chairman Goodlatte. Without objection, the amendment
2006 will be considered as read.

2007 [The amendment of Mr. Conyers and Ms. Lofgren follows:]

2008

2009 Chairman Goodlatte. And the gentleman from Michigan is
2010 recognized for 5 minutes on his amendment.

2011 Mr. Conyers. Thank you very much. Mr. Chairman, this
2012 is a very short amendment that would simply allow funding to
2013 continue for the prevention, detection, and referral of
2014 cases involving the sexual assault of persons in the custody
2015 of the Immigration and Customs Enforcement, Ice. This is an
2016 issue on which I am sure we all agree. The Prison Rape
2017 Reduction Act, which later became the Prison Rape
2018 Elimination Act, passed this committee by voice vote, and it
2019 later passed the Senate and the House with not a single vote
2020 against it.

2021 I am sure my colleagues will agree that rape is an
2022 abhorrent crime that has no place in Federal prisons or
2023 immigration detention centers. There is absolutely no
2024 reason that anyone should be afraid of being sexually
2025 assaulted when they are in the custody of the Federal
2026 government. But the underlying bill eliminates several
2027 safeguards within ICE to detect and combat such sexual
2028 assault.

2029 The Office of Custody Programs and Community Outreach

2030 oversees critical reforms of the immigration detention
2031 center, including the DHS regulations on the Prison Rape
2032 Elimination Act that were just finalized last week. The
2033 Office also operates a national telephone hotline that,
2034 among other things, takes complaints related to the sexual
2035 assault of persons in ICE custody.

2036 This amendment would allow the office to continue its
2037 work in implementing the Prison Rape Elimination Act
2038 regulations, and hearing and referring complaints related to
2039 sexual assault, including through the national hotline.
2040 When we debated the Prison Rape Elimination Act in this
2041 committee and on the floors of both houses of Congress,
2042 members on both sides spoke about the degree to which sexual
2043 assaults of incarcerated persons go unreported. We noted
2044 the lack of trusted avenues for reporting such crimes, and
2045 we spoke of the need to improve efforts to detect crimes.

2046 The text of the Prison Rape Elimination Act bears this
2047 out. The central components in that bipartisan bill are
2048 provisions intended to improve the detection as well as the
2049 investigation and resolution of rape complaints. Rather
2050 than supporting that effort, H.R. 3732 before us would

2051 undermine efforts to detect and combat rape in ICE custody.

2052 And so, this amendment would restore our commitment to
2053 investigating and preventing sexual assault by allowing
2054 funding to continue to be used for this purpose by the
2055 Office of Custody Programs and Community Outreach, nothing
2056 more, nothing less. And so, I plead with my colleagues on
2057 both sides to support.

2058 And I yield back the balance of my time, and thank the
2059 chairman.

2060 Chairman Goodlatte. The chair recognizes himself in
2061 opposition to the amendment. And before I move to my
2062 remarks on the amendment, I do want to advise members that
2063 for those who are concerned about the luncheon hour, the
2064 committee will continue its work given the load of business
2065 that we have.

2066 Mr. Conyers. Mr. Chairman?

2067 Chairman Goodlatte. And votes will be rolled until 1:15
2068 on any amendment for which a recorded vote is requested.

2069 For what purpose does the gentleman from Michigan -- I
2070 yield to the gentleman.

2071 Mr. Conyers. As you might expect, with all due respect,

2072 I feel quite strongly that on bills of this importance, we
2073 should not roll the votes, and we rarely do. As the former
2074 chair, I sought to roll the votes on a single occasion, and
2075 then the then ranking member, Lamar Smith, objected, and we
2076 agreed that we would not roll votes again without the
2077 concurrence of the minority. And we did not roll votes
2078 again.

2079 I think this is important for the Committee on the
2080 Judiciary, which deals with really complicated legal issues,
2081 particularly true on these set of bills which go to the very
2082 heart of our system of separation of powers, and are moving
2083 on such an expedited basis.

2084 I do concur with the chairman, we have a load of
2085 business before us, and we have got to move forward as
2086 expeditiously as possible. But as many of the members
2087 realize, when votes are rolled, this leads to many, if not
2088 most, members leaving the room, denying the committee and
2089 the Congress of the full debate and consideration of
2090 amendments that they deserve on bills of this nature.

2091 And I realize that we did have an agreement to roll
2092 votes several months ago. However, that was an isolated

2093 case where most of the Democratic members were in a meeting
2094 with our leadership. If we had had our preference, we would
2095 have adjourned until the end of the meeting, and it was the
2096 chair's decision to provide us with a specified time for
2097 adjournment only. We, therefore, requested that votes be
2098 rolled, and the chair agreed to do so.

2099 That was not intended to serve as any kind of a
2100 precedent. And I suggest members can continue in the
2101 cloakroom during floor votes at 1:30 or that we purchase our
2102 lunch, as we have in the past, and be allowed, all members,
2103 to work and vote. So I strongly implore the chairman of
2104 this committee not to roll the votes in this particular
2105 circumstance.

2106 Chairman Goodlatte. Well, the chair respects the
2107 gentleman's opinion and concurs that members should remain
2108 and participate. But the chair has previously advised
2109 members on this side of the aisle that we plan to roll
2110 votes. So again, without setting any precedent for what we
2111 might do in the future, it would be my intention just for
2112 the hour between now and 1:15 to roll any votes on
2113 amendments that may be completed during that time.

2114 And I will be here, but so as not to inconvenience
2115 somebody who has relied upon that, we would respectfully
2116 decline that, and go with the rolling of votes, which is
2117 common in a number of other committees in the House and does
2118 help to expedite matters. But certainly any member who has
2119 business before the committee and does not want to miss any
2120 minute of the debate is encouraged to remain for the debate,
2121 and of course they are encouraged to be on the floor the
2122 entire time for the debate when it is on the floor next
2123 week. And I often do not see very many members there when
2124 we do have those debates.

2125 So I take the former chairman's concerns to heart that
2126 members remain, but in reliance upon the need of some
2127 members to be away and our advice that they could, we need
2128 to roll votes until 1:15.

2129 Ms. Lofgren. Mr. Chairman?

2130 Mr. Conyers. Mr. Chairman, could I just merely respond
2131 by saying that we have two problems. One is that we would
2132 plead with you not to roll the votes in this particular
2133 instance, but also that we end the policy of rolling votes
2134 period. I would be deeply appreciative for members on both

2135 sides of the aisle that all of this should be done without
2136 rolling votes.

2137 Chairman Goodlatte. The rules of the committee provide
2138 now, and have for several Congresses, the ability of the
2139 committee to roll votes. And we have used it, and I would
2140 not want to commit to never using it because I think it was
2141 used to the benefit of the minority the last time we rolled
2142 them. And this time we are simply asking that given the
2143 fact that we need to proceed with our business today, and
2144 some members of the majority would like to see votes rolled,
2145 that we will do that, but for the limited time of --

2146 I know some committees will go all day long and then
2147 bring the members back at 4:00 in the afternoon or 5:00 to
2148 vote on all the rolled votes. We are not seeking to do
2149 that. We are simply seeking to do it for one hour until
2150 1:15.

2151 Ms. Lofgren. Mr. Chairman?

2152 Chairman Goodlatte. For what purpose does the
2153 gentlewoman from California seek recognition?

2154 Ms. Lofgren. I would move that we adjourn.

2155 Chairman Goodlatte. The question is on the motion to

2156 adjourn.

2157 All those in favor, respond by saying aye.

2158 Those opposed, no.

2159 In the opinion of the chair, the noes have it.

2160 Ms. Lofgren. I would ask for a recorded vote, Mr.

2161 Chairman.

2162 Chairman Goodlatte. A recorded vote is requested, and

2163 the clerk will call the roll.

2164 Ms. Deterding. Mr. Goodlatte?

2165 Chairman Goodlatte. No.

2166 Ms. Deterding. Mr. Goodlatte votes no.

2167 Mr. Sensenbrenner?

2168 [No response.]

2169 Ms. Deterding. Mr. Coble?

2170 [No response.]

2171 Ms. Deterding. Mr. Smith of Texas?

2172 [No response.]

2173 Ms. Deterding. Mr. Chabot?

2174 Mr. Chabot. No.

2175 Ms. Deterding. Mr. Chabot votes no.

2176 Mr. Bachus?

2177 [No response.]

2178 Ms. Deterding. Mr. Issa?

2179 Mr. Issa. No.

2180 Ms. Deterding. Mr. Issa votes no.

2181 Mr. Forbes?

2182 Mr. Forbes. No.

2183 Ms. Deterding. Mr. Forbes votes no.

2184 Mr. King?

2185 Mr. King. No.

2186 Mr. Deterding. Mr. King votes no.

2187 Mr. Franks?

2188 [No response.]

2189 Ms. Deterding. Mr. Gohmert?

2190 Mr. Gohmert. No.

2191 Ms. Deterding. Mr. Gohmert votes no.

2192 Mr. Jordan?

2193 [No response.]

2194 Ms. Deterding. Mr. Poe?

2195 [No response.]

2196 Ms. Deterding. Mr. Chaffetz?

2197 [No response.]

2198 Ms. Deterding. Mr. Marino?

2199 Mr. Marino. No.

2200 Ms. Deterding. Mr. Marino votes no.

2201 Mr. Gowdy?

2202 Mr. Gowdy. No.

2203 Ms. Deterding. Mr. Gowdy votes no.

2204 Mr. Labrador?

2205 Mr. Labrador. No.

2206 Ms. Deterding. Mr. Labrador votes no.

2207 Mr. Farenthold?

2208 [No response.]

2209 Ms. Deterding. Mr. Holding?

2210 Mr. Holding. No.

2211 Ms. Deterding. Mr. Holding votes no.

2212 Mr. Collins?

2213 Mr. Collins. No.

2214 Ms. Deterding. Mr. Collins votes no.

2215 Mr. DeSantis?

2216 Mr. DeSantis. No.

2217 Ms. Deterding. Mr. DeSantis votes no.

2218 Mr. Smith of Missouri?

2219 Mr. Smith of Missouri. No.

2220 Ms. Deterding. Mr. Smith of Missouri votes no.

2221 Mr. Conyers?

2222 Mr. Conyers. Aye.

2223 Ms. Deterding. Mr. Conyers votes aye.

2224 Mr. Nadler?

2225 Mr. Nadler. Aye.

2226 Ms. Deterding. Mr. Nadler votes aye.

2227 Mr. Scott?

2228 Mr. Scott. Aye.

2229 Ms. Deterding. Mr. Scott votes aye.

2230 Ms. Lofgren?

2231 Ms. Lofgren. Aye.

2232 Ms. Deterding. Ms. Lofgren votes aye.

2233 Ms. Jackson Lee?

2234 Ms. Jackson Lee. Aye.

2235 Ms. Deterding. Mr. Cohen?

2236 Mr. Cohen. Aye.

2237 Ms. Deterding. Mr. Cohen votes aye.

2238 Mr. Johnson?

2239 Mr. Johnson. Aye.

2240 Ms. Deterding. Mr. Johnson votes aye.

2241 Mr. Pierluisi?

2242 Mr. Pierluisi. No.

2243 Ms. Deterding. Mr. Pierluisi votes no.

2244 Ms. Chu?

2245 Ms. Chu. Aye.

2246 Ms. Deterding. Ms. Chu votes aye.

2247 Mr. Deutch?

2248 Mr. Deutch. Aye.

2249 Ms. Deterding. Mr. Deutch votes aye.

2250 Mr. Gutierrez?

2251 [No response.]

2252 Ms. Deterding. Ms. Bass?

2253 [No response.]

2254 Ms. Deterding. Mr. Richmond?

2255 [No response.]

2256 Ms. Deterding. Ms. DelBene?

2257 Ms. DelBene. Aye.

2258 Ms. Deterding. Ms. DelBene votes aye.

2259 Mr. Garcia?

2260 Mr. Garcia. Aye.

2261 Ms. Deterding. Mr. Garcia votes aye.

2262 Mr. Jeffries?

2263 [No response.]

2264 Ms. Deterding. Mr. Cicilline?

2265 Mr. Cicilline. Aye.

2266 Ms. Deterding. Mr. Cicilline votes aye.

2267 Mr. Jordan. Mr. Chairman?

2268 Chairman Goodlatte. The gentleman from Ohio?

2269 Mr. Jordan. No.

2270 Ms. Deterding. Mr. Jordan votes no.

2271 Mr. Coble. Mr. Chairman?

2272 Chairman Goodlatte. The gentleman from North Carolina?

2273 Mr. Coble. No.

2274 Ms. Deterding. Mr. Coble votes no.

2275 Chairman Goodlatte. Are there other members who wish to

2276 vote who have not voted?

2277 [No response.]

2278 Chairman Goodlatte. The clerk will report.

2279 Ms. Deterding. Mr. Chairman, 13 members voted aye, 15

2280 members voted nay.

2281 Chairman Goodlatte. And the motion is not agreed to.

2282 The chair has recognized himself in opposition to the
2283 amendment, and I think that is the next step.

2284 This amendment states that nothing in this act shall be
2285 construed to prohibit the deputy assistant director of
2286 custody programs and community outreach from hearing and
2287 referring complaints. The problem with this is the bill
2288 eliminates the position of deputy assistant director of
2289 custody programs and community outreach. How can a position
2290 that does not exist hear and refer complaints?

2291 I understand that some members on the other side of the
2292 aisle do not want to eliminate this position. Apparently
2293 the Obama Administration does not either. However, Congress
2294 has already spoken on this issue when it eliminated the
2295 position of public advocate, the predecessor position of the
2296 deputy assistant director of custody programs and community
2297 outreach.

2298 Members who think the position of public advocate or
2299 deputy assistant director of custody programs and community
2300 outreach should exist, they should introduce legislation to
2301 authorize it. We should not allow the President to
2302 circumvent Congress' power of the purse and create the

2303 position on his own. Because this amendment would open the
2304 door for the President to unilaterally create or maintain
2305 such a position, I oppose the amendment.

2306 Mr. Nadler. Mr. Chairman?

2307 Ms. Lofgren. Mr. Chairman?

2308 Chairman Goodlatte. The gentleman from New York seeks
2309 recognition

2310 Mr. Nadler. I move to adjourn for 1 hour.

2311 Chairman Goodlatte. The question is on the motion of
2312 the gentleman from New York to adjourn for 1 hour.

2313 All those in favor, respond by saying aye.

2314 All those opposed, no.

2315 In the opinion of the chair, the noes have it.

2316 Mr. Nadler. A recorded vote.

2317 Chairman Goodlatte. A recorded vote is requested. The
2318 clerk will call the roll.

2319 Ms. Deterding. Mr. Goodlatte?

2320 Chairman Goodlatte. No.

2321 Ms. Deterding. Mr. Goodlatte votes no.

2322 Mr. Sensenbrenner?

2323 [No response.]

2324 Ms. Deterding. Mr. Coble?

2325 Mr. Coble. No.

2326 Ms. Deterding. Mr. Coble votes no.

2327 Mr. Smith of Texas?

2328 [No response.]

2329 Ms. Deterding. Mr. Chabot?

2330 Mr. Chabot. No.

2331 Ms. Deterding. Mr. Chabot votes no.

2332 Mr. Bachus?

2333 [No response.]

2334 Ms. Deterding. Mr. Issa?

2335 Mr. Issa. How am I recorded?

2336 Ms. Deterding. Not recorded, sir.

2337 Mr. Issa. I am a no.

2338 Ms. Deterding. Mr. Issa votes no.

2339 Mr. Forbes?

2340 Mr. Forbes. No.

2341 Ms. Deterding. Mr. Forbes votes no.

2342 Mr. King?

2343 Mr. King. No.

2344 Mr. Deterding. Mr. King votes no.

2345 Mr. Franks?

2346 [No response.]

2347 Ms. Deterding. Mr. Gohmert?

2348 Mr. Gohmert. No.

2349 Ms. Deterding. Mr. Gohmert votes no.

2350 Mr. Jordan?

2351 Mr. Jordan. No.

2352 Ms. Deterding. Mr. Jordan votes no.

2353 Mr. Poe?

2354 [No response.]

2355 Ms. Deterding. Mr. Chaffetz?

2356 [No response.]

2357 Ms. Deterding. Mr. Marino?

2358 Mr. Marino. No.

2359 Ms. Deterding. Mr. Marino votes no.

2360 Mr. Gowdy?

2361 Mr. Gowdy. No.

2362 Ms. Deterding. Mr. Gowdy votes no.

2363 Mr. Labrador?

2364 Mr. Labrador. No.

2365 Ms. Deterding. Mr. Labrador votes no.

2366 Mr. Farenthold?

2367 [No response.]

2368 Ms. Deterding. Mr. Holding?

2369 [No response.]

2370 Ms. Deterding. Mr. Collins?

2371 Mr. Collins. No.

2372 Ms. Deterding. Mr. Collins votes no.

2373 Mr. DeSantis?

2374 [No response.]

2375 Ms. Deterding. Mr. Smith of Missouri?

2376 Mr. Smith of Missouri. No.

2377 Ms. Deterding. Mr. Smith of Missouri votes no.

2378 Mr. Conyers?

2379 Mr. Conyers. Aye.

2380 Ms. Deterding. Mr. Conyers votes aye.

2381 Mr. Nadler?

2382 Mr. Nadler. Aye.

2383 Ms. Deterding. Mr. Nadler votes aye.

2384 Mr. Scott?

2385 Mr. Scott. Aye.

2386 Ms. Deterding. Mr. Scott votes aye.

2387 Ms. Lofgren?

2388 Ms. Lofgren. Aye.

2389 Ms. Deterding. Ms. Lofgren votes aye.

2390 Ms. Jackson Lee?

2391 Ms. Jackson Lee. Aye.

2392 Ms. Deterding. Ms. Jackson Lee votes aye.

2393 Mr. Cohen?

2394 Mr. Cohen. Aye.

2395 Ms. Deterding. Mr. Cohen votes aye.

2396 Mr. Johnson?

2397 Mr. Johnson. Aye.

2398 Ms. Deterding. Mr. Johnson votes aye.

2399 Mr. Pierluisi?

2400 [No response.]

2401 Ms. Deterding. Ms. Chu?

2402 Ms. Chu. Aye.

2403 Ms. Deterding. Ms. Chu votes aye.

2404 Mr. Deutch?

2405 [No response.]

2406 Ms. Deterding. Mr. Gutierrez?

2407 [No response.]

2408 Ms. Deterding. Ms. Bass?

2409 [No response.]

2410 Ms. Deterding. Mr. Richmond?

2411 [No response.]

2412 Ms. Deterding. Ms. DelBene?

2413 Ms. DelBene. Aye.

2414 Ms. Deterding. Ms. DelBene votes aye.

2415 Mr. Garcia?

2416 Mr. Garcia. Aye.

2417 Ms. Deterding. Mr. Garcia votes aye.

2418 Mr. Jeffries?

2419 [No response.]

2420 Ms. Deterding. Mr. Cicilline?

2421 Mr. Cicilline. Aye.

2422 Ms. Deterding. Mr. Cicilline votes aye.

2423 Chairman Goodlatte. Are there members who have not

2424 voted who wish to vote?

2425 [No response.]

2426 Chairman Goodlatte. The clerk will report.

2427 Ms. Deterding. Mr. Chairman, 11 members voted aye, 13

2428 members voted nay.

2429 Chairman Goodlatte. And the motion is not agreed to.

2430 Ms. Lofgren. Mr. Chairman?

2431 Chairman Goodlatte. For what purpose does the

2432 gentlewoman from California seek recognition?

2433 Ms. Lofgren. To strike the last word.

2434 Chairman Goodlatte. The gentlewoman is recognized for 5

2435 minutes.

2436 Ms. Lofgren. I would like to speak in favor of this

2437 amendment. I think it is an important one. And I would

2438 note that the bill before us does not eliminate the position

2439 of the deputy assistant director of custody programs. It

2440 simply says that none of the funds made available by any

2441 Federal law may be used to provide funding for the position.

2442 And the amendment would, in fact, allow funds to be used for

2443 the purpose of the Prison Rape Elimination Act.

2444 Now, it is interesting in that we came together,

2445 Republicans and Democrats, to say that sexual assault for

2446 people in custody is something we oppose. I do not think it

2447 should be a surprise that we oppose that. If you are in

2448 custody, you should not be raped. You should not be

2449 assaulted. And I want to give credit Congressman Scott, and

2450 there were several Republicans members who were involved in
2451 it as well, for coming together to lead us. This was a
2452 voice vote in the committee, and it was unanimous, almost
2453 unanimous in the House of Representatives.

2454 Now, the bill before us would defund all of the programs
2455 in the custody program community outreach, and it turns out
2456 that that office is the one that coordinates the Prison Rape
2457 Elimination Act regulations. The national telephone hotline
2458 that was specifically outlawed in the bill is the one that
2459 takes complaints related to sexual assault of people in ICE
2460 custody. And so, this bill would eliminate the Prison Rape
2461 Elimination Act efforts that we all agreed to.

2462 Now, earlier Congressman Issa indicated that somehow the
2463 President should magically have understood the intent of a
2464 poorly-drafted writer that was intended to eliminate all of
2465 the functions, even though it did not indicate and did not
2466 by its terms do so. That would put the President in a
2467 rather difficult position because the Congress specifically
2468 and unanimously said eliminate rape for people who are held
2469 in custody. At the same time apparently Congresswoman Black
2470 wanted, by her rider, to eliminate the elimination of our

2471 efforts against rape in custody because that is what this
2472 office did.

2473 I oppose the bill overall, but if we are going to
2474 proceed, we should not allow this bill undercut our
2475 bipartisan efforts to oppose sexual assault and rape in ICE
2476 custody. I do think the amendment is effective in doing
2477 that. As I indicated earlier, the bill does not eliminate
2478 the position, merely defunds it, and the amendment would
2479 allow funds to be used for the purpose of preventing sexual
2480 assault while in the custody of U.S. ICE.

2481 And I will say that when I chaired the Immigration
2482 Subcommittee, we had a number of hearings, and regrettably
2483 there are many instances where people in ICE custody have
2484 been sexually assaulted and even raped. We should not allow
2485 that as civilized beings, and I strongly recommend that we
2486 approve the amendment. I yield back.

2487 Chairman Goodlatte. The gentlewoman yields back. Who
2488 seeks recognition?

2489 [No response.]

2490 Chairman Goodlatte. The question occurs on the
2491 amendment. The chair would advise the members that if a

2492 recorded vote is required on the amendment, the committee
2493 will recess as per the request of the gentleman from
2494 Michigan until 1:15. If the committee wishes to proceed,
2495 then we will do that.

2496 So the question is on the amendment offered by the
2497 gentleman from Michigan.

2498 All those in favor, respond by saying aye.

2499 Those opposed, no.

2500 In the opinion of the chair, the noes have it, and the
2501 amendment is not agreed to.

2502 Ms. Lofgren. Mr. Chairman, I would ask for a recorded
2503 vote.

2504 Chairman Goodlatte. A recorded vote is required. The
2505 committee will stand in recess until 1:15.

2506 [Recess.]

2507 Chairman Goodlatte. The committee will reconvene. When
2508 the committee recessed, the matter under consideration was
2509 the amendment offered by the gentleman from Michigan, Mr.
2510 Conyers, on which a recorded vote was requested. And the
2511 clerk will call the roll.

2512 Ms. Deterding. Mr. Goodlatte?

2513 Chairman Goodlatte. No.

2514 Ms. Deterding. Mr. Goodlatte votes no.

2515 Mr. Sensenbrenner?

2516 [No response.]

2517 Ms. Deterding. Mr. Coble?

2518 [No response.]

2519 Ms. Deterding. Mr. Smith of Texas?

2520 Mr. Smith of Texas. No.

2521 Ms. Deterding. Mr. Smith of Texas votes no.

2522 Mr. Chabot?

2523 [No response.]

2524 Ms. Deterding. Mr. Bachus?

2525 Mr. Bachus. No.

2526 Ms. Deterding. Mr. Bachus votes no.

2527 Mr. Issa?

2528 Mr. Issa. No.

2529 Ms. Deterding. Mr. Issa votes no.

2530 Mr. Forbes?

2531 Mr. Forbes. No.

2532 Ms. Deterding. Mr. Forbes votes no.

2533 Mr. King?

2534 Mr. King. No.

2535 Mr. Deterding. Mr. King votes no.

2536 Mr. Franks?

2537 [No response.]

2538 Ms. Deterding. Mr. Gohmert?

2539 [No response.]

2540 Ms. Deterding. Mr. Jordan?

2541 [No response.]

2542 Ms. Deterding. Mr. Poe?

2543 Mr. Poe. No.

2544 Ms. Deterding. Mr. Poe votes no.

2545 Mr. Chaffetz?

2546 [No response.]

2547 Ms. Deterding. Mr. Marino?

2548 Mr. Marino. No.

2549 Ms. Deterding. Mr. Marino votes no.

2550 Mr. Gowdy?

2551 Mr. Gowdy. No.

2552 Ms. Deterding. Mr. Gowdy votes no.

2553 Mr. Labrador?

2554 Mr. Labrador. No.

2555 Ms. Deterding. Mr. Labrador votes no.

2556 Mr. Farenthold?

2557 Mr. Farenthold. No.

2558 Ms. Deterding. Mr. Farenthold votes no.

2559 Mr. Holding?

2560 Mr. Holding. No.

2561 Ms. Deterding. Mr. Holding votes no.

2562 Mr. Collins?

2563 Mr. Collins. No.

2564 Ms. Deterding. Mr. Collins votes no.

2565 Mr. DeSantis?

2566 Mr. DeSantis. No.

2567 Ms. Deterding. Mr. DeSantis votes no.

2568 Mr. Smith of Missouri?

2569 Mr. Smith of Missouri. No.

2570 Ms. Deterding. Mr. Smith of Missouri votes no.

2571 Mr. Conyers?

2572 Mr. Conyers. Aye.

2573 Ms. Deterding. Mr. Conyers votes aye.

2574 Mr. Nadler?

2575 Mr. Nadler. Aye.

2576 Ms. Deterding. Mr. Nadler votes aye.

2577 Mr. Scott?

2578 Mr. Scott. Aye.

2579 Ms. Deterding. Mr. Scott votes aye.

2580 Ms. Lofgren?

2581 Ms. Lofgren. Aye.

2582 Ms. Deterding. Ms. Lofgren votes aye.

2583 Ms. Jackson Lee?

2584 [No response.]

2585 Ms. Deterding. Mr. Cohen?

2586 [No response.]

2587 Ms. Deterding. Mr. Johnson?

2588 Mr. Johnson. Aye.

2589 Ms. Deterding. Mr. Johnson votes aye.

2590 Mr. Pierluisi?

2591 [No response.]

2592 Ms. Deterding. Ms. Chu?

2593 [No response.]

2594 Ms. Deterding. Mr. Deutch?

2595 Mr. Deutch. Aye.

2596 Ms. Deterding. Mr. Deutch votes aye.

2597 Mr. Gutierrez?

2598 [No response.]

2599 Ms. Deterding. Ms. Bass?

2600 [No response.]

2601 Ms. Deterding. Mr. Richmond?

2602 [No response.]

2603 Ms. Deterding. Ms. DelBene?

2604 Ms. DelBene. Aye.

2605 Ms. Deterding. Ms. DelBene votes aye.

2606 Mr. Garcia?

2607 Mr. Garcia. Aye.

2608 Ms. Deterding. Mr. Garcia votes aye.

2609 Mr. Jeffries?

2610 [No response.]

2611 Ms. Deterding. Mr. Cicilline?

2612 Mr. Cicilline. Aye.

2613 Ms. Deterding. Mr. Cicilline votes aye.

2614 Chairman Goodlatte. The gentleman from North Carolina,

2615 Mr. Coble?

2616 Mr. Coble. No.

2617 Ms. Deterding. Mr. Coble votes no.

2618 Chairman Goodlatte. The gentleman from Tennessee, Mr.

2619 Cohen?

2620 Mr. Cohen. Aye.

2621 Ms. Deterding. Mr. Cohen votes aye.

2622 Chairman Goodlatte. Is there any member who has not

2623 voted who wishes to vote?

2624 [No response.]

2625 Chairman Goodlatte. The clerk will report.

2626 Ms. Deterding. Mr. Chairman, 10 members voted aye, 16

2627 members voted nay.

2628 Chairman Goodlatte. And the amendment is not agreed to.

2629 The committee will now postpone further consideration of

2630 H.R. 3732 and move to H.R. 4138. So pursuant to notice, I

2631 now call up H.R. 4138 for purposes of markup and move that

2632 the committee report the bill favorably to the House.

2633 The clerk will report the bill.

2634 Ms. Deterding. H.R. 4138, to protect the separation of

2635 powers in the Constitution of the United States by ensuring

2636 that the President takes care that the laws be faithfully

2637 executed and for other purposes.

2638 Chairman Goodlatte. Without objection, the bill is

2639 considered as read and open for amendment at any point.

2640 [The information follows:]

2641

2642 Chairman Goodlatte. And I will begin by recognizing the
2643 gentleman from South Carolina for an opening statement.

2644 Mr. Gowdy. Thank you, Mr. Chairman. From time to time
2645 I like to find quotes from famous people and then try to
2646 match those quotes up with the famous person who uttered
2647 them, Mr. Chairman. And I may see if some of my colleagues
2648 can help me today with that endeavor.

2649 Here is the first quote: "We have seen an unacceptable
2650 abuse of power at home for having a President whose priority
2651 is expanding his own power. The Constitution is treated
2652 like a nuisance." Anyone want to take a guess who said
2653 that?

2654 Mr. Conyers. Dick Cheney?

2655 Mr. Gowdy. Senator Barack Obama. "No wall can give
2656 Congress a backbone if he refuses to stand up as the co-
2657 equal branch the Constitution made it." Senator Barack
2658 Obama.

2659 "Congress' job is to pass legislation. The President
2660 can veto it or he can sign it. But he cannot change it by
2661 attaching a letter saying I do not agree with this part or I
2662 do not agree with that part." Senator Barack Obama. "I

2663 have taught the Constitution for 10 years, Mr. Chairman. I
2664 believe in the Constitution, and I will obey the
2665 Constitution." That also was Senator Barack Obama.

2666 Now, as you know, Mr. Chairman, he auditioned for a
2667 higher office, President, where he now has the power, Mr.
2668 Chairman, to veto any legislation he wants for whatever
2669 reason he wants. He can through his Attorney General fail
2670 to defend the constitutionality of a bill. He can even
2671 invite a lawsuit, Mr. Chairman. a friendly lawsuit, and then
2672 refuse to defend the constitutionality. But what he cannot
2673 do, Mr. Chairman, not this President or any other president,
2674 is select which portions of the law he wants to enforce and
2675 ignore the others because that gives him a second, more
2676 insidious veto than the first one our framers gave him.

2677 Mr. Chairman, I have got a lot of colleagues on this
2678 side of the aisle and a bunch on the other side of the aisle
2679 who were wonderful attorneys prior to coming to Congress.
2680 And they know that even when the police make a technical
2681 mistake with respect to the 4th Amendment, they get the
2682 evidence. They did not bust the door down. Maybe they just
2683 failed to sign the search warrant return. Maybe there is

2684 just a date out of order. And what is the remedy when the
2685 executive branch fails to follow the process of the 4th
2686 Amendment? It is called the exclusionary rule.

2687 How about the 5th Amendment? What happens when there is
2688 a technical violation of the 5th Amendment? When you read
2689 all of the prophylactic *Miranda* warnings, but you just leave
2690 one out, what happens? We let the person go, Mr. Chairman.
2691 Their confession is not used in court. Why? Because we
2692 value process. The end does not justify the means.

2693 I have heard reference to Mr. Schroeder this morning,
2694 our friend from Duke. And I asked him about mandatory
2695 minimums. It is the law passed by Congress. If you have X
2696 amount of cocaine base, X amount of heroine, X amount of
2697 methamphetamine, it is a mandatory minimum. You may not
2698 like mandatory minimums. I do not like mandatory minimums
2699 in drug cases. But the answer is not for your Attorney
2700 General to summarily conclude that he no longer going to
2701 enforce the law.

2702 The Constitution gave us certain remedies, Mr. Chairman.
2703 Our friends in the Senate right now, there are 3 clowns up
2704 for ambassador. It is embarrassing. It ought to be

2705 embarrassing for everyone in Congress to have people whose
2706 sole qualification is that they gave a lot of money. The
2707 Senate ought to use their constitutional remedy and deny
2708 advice and consent. We have remedies over here, the power
2709 of the purse.

2710 What this bill is doing, Mr. Chairman, is giving us
2711 another remedy, which is standing as an institution under
2712 *Raines* and *Coleman* to sue, not just a few members of
2713 Congress who may not have liked the way a vote turned out,
2714 but the institution as a whole to stand up as a co-equal
2715 branch of government. I promise you, Senator Obama would
2716 have supported this. I wonder if President Obama does. But
2717 I would love to pass it and find it.

2718 With that, I will yield back.

2719 Chairman Goodlatte. The chair thanks the gentleman and
2720 recognizes the gentleman from Michigan, the ranking member,
2721 for his opening.

2722 Mr. Conyers. I trust we are talking about the same
2723 measure, Mr. Chairman, H.R. 4138. And before turning to the
2724 substance of this measure called "Executive Needs to
2725 Faithfully Observe and Respect Congressional Enactments of

2726 the Law," I must cite for the committee the utter lack of
2727 deliberative process regarding the legislation. This
2728 committee has not held a single legislative hearing on this
2729 bill, nor was there any subcommittee markup. In fact, the
2730 final text of the bill was not made available until
2731 yesterday.

2732 So when you take into consideration the fact that my
2733 colleagues, some of them on the other side, provided only a
2734 minimum notice of today's markup, it is no shock that my
2735 colleagues on this side of the aisle consider today's markup
2736 to be a not so serious attempt to legislate. All of this
2737 should be considered also in the light of the fact that H.R.
2738 4138 raises fundamental and complex issues of constitutional
2739 law, which I shall shortly explain. Today's markup in a way
2740 makes a mockery of how our committee should conduct its own
2741 legislative business. It is also a disservice to the
2742 Congress as a whole.

2743 Turning to the substance of 4138, I will simply refer to
2744 it here as the ENFORCE Act. This measure, like so many
2745 other bills we have considered this Congress, amounts to a
2746 solution in search of an imaginary problem. As was made

2747 clear during the two full committee oversight hearings that
2748 we held on the take care clause, the President has, in fact,
2749 fully met his obligation to faithfully execute the laws.

2750 To begin with, let us acknowledge what this legislation
2751 is really all about. It is yet another attempt by many in
2752 the majority to prevent the President's implementation of
2753 duly enacted legislative initiatives that they oppose, and
2754 to stymie the President's traditional discretion in
2755 enforcing laws. Allowing flexibility in the implementation
2756 of a new program, even where the statute mandates a specific
2757 deadline, is neither unusual, nor is it a constitutional
2758 violation. Rather, it is the reality of administering
2759 sometimes complex programs, and it is part and parcel of the
2760 President's duty to take care that he faithfully execute
2761 laws.

2762 This has been especially true with respect to the
2763 Affordable Care Act. The President's decision to extend
2764 certain compliance dates to help phase in the act is not a
2765 novel tactic. And even though not a single court has ever
2766 concluded that reasonable delay in implementing a complex
2767 law constitutes a violation of the take care clause, the

2768 majority insists that there is a constitutional crisis.

2769 Additionally, the exercise of enforcement discretion is
2770 a traditional power of the executive. For example, the
2771 decision to defer deportation of young adults who were
2772 brought to the United States as children, the dreamers, is a
2773 classic exercise of such discretion. And it is no surprise
2774 that the Supreme Court has consistently held that the
2775 exercise of such discretion is a function of the President's
2776 power under the take care clause.

2777 As the Court held in *Heckler v. Chaney*, an agency's
2778 decision not to prosecute or enforce, whether through civil
2779 or criminal process, is a decision generally committed to an
2780 agency's absolute discretion. Even assuming there is a
2781 problem to address, this legislation is constitutionally
2782 flawed because it violates separation of powers principles.

2783 The ENFORCE Act seeks to allow Congress to draft the
2784 Federal courts into second guessing decisions by the
2785 executive branch in a potentially vast range of areas that
2786 are committed to executive branch discretion. For example,
2787 Section 508 of the Foreign Assistance Act prohibits the
2788 executive branch from assisting a country whose leader was

2789 deposed in a coup. If the President or the Secretary of
2790 State were to continue providing assistance to countries
2791 like Ukraine or Egypt because they have determined that
2792 these regime changes that occurred there did not qualify as
2793 coups, Congress could sue the President under the ENFORCE
2794 Act if it concluded otherwise and determined that the
2795 President was failing to faithfully execute the Foreign
2796 Assistance Act. This hardly seems like a prudent use of
2797 legislative or judicial resources.

2798 Additionally, Congress likely cannot satisfy Article 3
2799 standing requirements to sue to enforce the take care
2800 clause. To meet these requirements, a plaintiff under the
2801 Supreme Court's 1997 decision in *Raines v. Byrd* must show,
2802 among other things, that it suffered a concrete and
2803 particularized injury. Injury amounting only to an alleged
2804 violation of a right to have the government act in
2805 accordance with law, which is what the ENFORCE Act
2806 contemplates, is not judicially cognizable for Article 3
2807 standing purposes.

2808 Importantly, there is, in contrast to cases like the one
2809 this committee brought against Harriet Miers a long time ago

2810 when I was once sitting one seat removed from where I am
2811 now. In subcommittee enforcement cases, courts have found
2812 standing for one house of Congress to sue. In those cases,
2813 a specific legislative prerogative was at stake constituting
2814 a sufficiently concrete injury to Congress to confer Article
2815 3 standing. Article 3 standing requirements enforce the
2816 Constitution's separation of powers principles. Congress
2817 cannot simply legislate away these constitutional standing
2818 requirements as some are trying to do this afternoon and
2819 trying to do with the ENFORCE Act.

2820 And finally, the lack of deliberative process leading up
2821 to today's markup underscores that this may not be such a
2822 serious undertaking as was first imagined. The ENFORCE Act
2823 was introduced only yesterday. The first we learned of its
2824 existence was 2 days ago when we saw a discussion draft on a
2825 day when Congress and the Federal government was closed
2826 because of inclement weather.

2827 We held no legislative hearings on this bill, nor did we
2828 hold a markup of it in subcommittee. And so this short-
2829 circuited process shows that even the majority may know that
2830 this legislation should never and will never become law. I

2831 thank you, Mr. Chairman, for your extended time.

2832 Chairman Goodlatte. The chair thanks the gentleman.

2833 The bill is open for amendment at any time. Who seeks

2834 recognition?

2835 For what purpose does the gentleman from Tennessee seek

2836 recognition?

2837 Mr. Cohen. Well, to present an opening statement as

2838 chairman of the subcommittee, but if not, to strike the last

2839 word.

2840 Chairman Goodlatte. The gentleman is recognized for 5

2841 minutes.

2842 Mr. Cohen. Thank you, sir. As my colleague said so

2843 eloquently during our hearings last week on the take care

2844 clause, the majority's attempt to turn routine exercises of

2845 presidential discretion into constitutional violations is

2846 nothing but a show and a pretext to attack our President,

2847 President Barack Obama. It is unfortunate that this has

2848 happened.

2849 Woody Allen, with all due respect to Mia Farrow and

2850 Ronan Farrow, said it best when playing Fielding Mellish in

2851 *Bananas*: "This is a travesty of a mockery of a sham of a

2852 mockery of a travesty of two mockeries of a sham." And that
2853 is what this hearing is unfortunately.

2854 H.R. 4138, the so-called Executive Needs to Faithfully
2855 Observe and Respect Constitutional Enactments to Law Act,
2856 which is ironic because the executive needs to respect us,
2857 but we do not respect him, or Enforce the Law Act, would
2858 establish a process by which one House of Congress could sue
2859 the President when it determines the President failed to
2860 faithfully execute a law.

2861 My friend from South Carolina said we are a co-equal
2862 branch. We are not. The legislative branch is co-equal,
2863 but the House is not equal to the President even though
2864 sometimes in the last few years it has gotten mistaken to
2865 think that the House is and they should be running the
2866 government.

2867 This bill would, if enacted, represent a massive
2868 upending of that carefully calibrated separation of powers
2869 of two houses being a legislative branch that is a co-equal
2870 branch. First, Congress likely lacks standing to sue as
2871 outlined in Article 3's requirement that courts decide a
2872 case or controversy. The kind of inquiry contemplated by

2873 the Enforce the Law Act -- that is, allegations of duly-
2874 enacted laws are not being enforced -- are too diffused and
2875 generalized to satisfy Article 3 standing. Standing
2876 requirements are not just legal niceties. Rather, they are
2877 designed to enforce the separation of powers framework
2878 embodied in our Constitution, and which we give oath and
2879 fidelity.

2880 Second, by drafting Federal courts into deciding what
2881 are essentially political questions, the bill would further
2882 upset that separation of powers balance. Questions about
2883 when and how to implement and enforce laws are entirely
2884 within the President's discretion as the take care clause
2885 makes clear. It is the President's duty alone to take care
2886 that the laws be faithfully executed, not the courts and not
2887 Congress'. The courts rightfully avoid involving themselves
2888 in disputes between the political branches of questions of
2889 how a law is executed. This bill flies in the face of such
2890 historical prudence.

2891 Ultimately, though, this bill and the larger debate
2892 surrounding it have nothing to do with the finer points of
2893 constitutional law. Rather it is a part of a broader

2894 attempt by the majority party in the House to de-legitimize
2895 anything that this President does and to put itself on an
2896 equal footing with the President of the United States of
2897 America. Here the majority complains, among other things,
2898 about the fact that President Obama delayed implementation
2899 of certain provisions of the Affordable Care Act, like the
2900 employer mandates for medium and large businesses. This is
2901 really strange because they want to emphasize this when the
2902 President is acting in an allegedly unconstitutional way to
2903 undermine his own signature legislation, but one that the
2904 Republicans hate and today for the 50th time will try to
2905 repeal.

2906 This shows the depths of what Dana Milbank referred to
2907 as Obama derangement syndrome where the President's
2908 opponents are so determined to thwart him that they will say
2909 anything, including reversing their long-held views, if they
2910 believe doing so will weaken his stature. In Yiddish it is
2911 called chutzpah. In law it is called estoppel. You would
2912 be estopped to make a claim when you are the cause of the
2913 problem, and when you want the result you would be estopped
2914 to bring it in court.

2915 This is unfortunate because this President had led when
2916 this Republican House has failed on immigration to make our
2917 Nation greater and to bring people out of the shadows and
2918 into the American economy and into the American system; on
2919 economic reform and jobs when we need them so much; on
2920 financial reform where the American public almost fell of a
2921 precipice into a great depression caused by Wall Street; on
2922 worker safety where people lose their lives because of
2923 regulations that are not enforce or passed; on environmental
2924 protections where health and safety are so much at risk; and
2925 on healthcare, the biggest cause of the public problem with
2926 the debt. And we are reducing the costs of healthcare,
2927 which is the biggest contributor to the deficit.

2928 So the thanks President Obama gets from this majority
2929 for his efforts to implement and enforce the law as
2930 thoughtfully as he could in light of limited resources and
2931 public feedback, is to be accused of violating the
2932 Constitution, doing what, in some cases, what the majority
2933 party in the House really wants, but when the President does
2934 it, they object to it. This is sad.

2935 Not only were President Obama's actions related to the

2936 American Care Act perfectly within his constitutional right
2937 and authority, they were a demonstration of his wise
2938 leadership and those that voted for it. The American Care
2939 Act is leading America and Americans to a healthier
2940 tomorrow. That is what we should be emphasizing today is
2941 health for all Americans. And with that, I yield back the
2942 balance of my time.

2943 Chairman Goodlatte. The gentleman yields back. Are
2944 there amendments?

2945 Mr. Conyers. Yes, sir. Yes, sir. I have an amendment.

2946 Chairman Goodlatte. The gentleman from Michigan's
2947 amendment will be reported by the clerk.

2948 Ms. Deterding. Amendment to H.R. 4138, offered by Mr.
2949 Conyers of Michigan, page 4, after line 7, insert the
2950 following --

2951 Chairman Goodlatte. Without objection, the amendment
2952 shall be considered as read.

2953 [The amendment of Mr. Conyers follows:]

2954

2955 Chairman Goodlatte. And the gentleman from Michigan is
2956 recognized for 5 minutes on his amendment.

2957 Mr. Conyers. Thank you. Members of the committee, this
2958 amendment states the following: "Nothing in this act limits
2959 or otherwise affects any action taken by the President, the
2960 head of a department or agency of the United States, or any
2961 other officer or employee of the United States, in order to
2962 combat discrimination and protect civil rights of the people
2963 of the United States."

2964 It is a very critical amendment from my point of view
2965 because my amendment would exclude civil rights enforcement
2966 from the scope of this bill. The last thing we should want
2967 to do as a Congress is to pass legislation that makes it
2968 more difficult to protect our citizens' civil rights by
2969 executive action or otherwise. Yet if H.R. 4138 had been
2970 law, several of the most critical civil rights milestones in
2971 our Nation would have been subjected to unnecessary
2972 congressional challenge in the courts.

2973 A little history. In 1863, President Lincoln issued
2974 perhaps the most important executive order in our Nation's
2975 history, the Emancipation Proclamation. By this order,

2976 Lincoln freed those enslaved in those southern States that
2977 were engaged in military conflict with the Union. And by
2978 doing so, President Lincoln not only encouraged members who
2979 were enslaved to take up arms in fighting the Civil War for
2980 the Union, and he struck a blow for freedom that resonated
2981 around the world. By issuing the order, however, President
2982 Lincoln made a decision to not enforce then existing laws
2983 protecting the institution of slavery, including the Federal
2984 Fugitive Slave Act.

2985 Clearly history has shown Lincoln's decision to be not
2986 only a legal and military turning point, but to be morally
2987 correct as well. And clearly had the so-called ENFORCE Act
2988 been law, the Emancipation Proclamation could have been
2989 subject to an unnecessary and unhelpful legal challenge in
2990 the courts from Congress.

2991 Another example is President Truman's executive order
2992 981, issued in 1948, that desegregated the United States
2993 military. With more than 125,000 African-Americans serving
2994 overseas in the military in World War II, this was a
2995 worthwhile and appropriate action by the President.
2996 Nevertheless, by issuing this order, President Truman

2997 contravened the then military policy of segregating certain
2998 African-American military units from white units. And
2999 again, had this bill been law, it would have permitted an
3000 unnecessary congressional legal challenge in the courts, and
3001 such a challenge would not have been politically unpopular
3002 in many quarters.

3003 Remember that 1948 was the year that Strom Thurmond
3004 bolted from the Democratic Party to form the Dixiecrats, and
3005 went on to carry 4 States, and strongly competed in many
3006 others in the presidential election.

3007 And so, I urge my colleagues on both sides of the aisle
3008 to please consider the unintended consequences of the
3009 legislation before us. It would not only represent a
3010 permanent stain on the principle of separation of powers
3011 written by the founding fathers into the Constitution, it
3012 would make it far more difficult to protect our civil rights
3013 and other constitutional protections. Accordingly, I urge a
3014 yes vote to protect civil rights.

3015 And I thank the chairman and yield back the balance of
3016 my time.

3017 Chairman Goodlatte. The chair thanks the gentleman and

3018 recognizes himself in opposition to the amendment.

3019 I oppose this amendment because it would allow the
3020 President to avoid accountability for his failure to enforce
3021 provisions of the civil laws as written simply based on his
3022 subjective understanding on what those laws mean. This
3023 amendment remarkably would prevent the Federal courts from
3024 ordering the President to enforce civil rights laws when the
3025 President is failing to faithfully execute them.

3026 If the President wants to suspend the Federal laws
3027 against employment discrimination because he has a different
3028 understanding regarding what protecting civil rights means,
3029 he should support this amendment. But I want to see the
3030 President faithfully execute all laws, including the civil
3031 rights laws, as they are enacted by Congress and signed into
3032 law by the President. Members who agree with me should
3033 oppose this amendment.

3034 And I want to take a moment to tell why I support this
3035 legislation offered by the gentleman from South Carolina.
3036 Since taking office, President Obama has increasingly pushed
3037 the boundaries on executive power beyond their
3038 constitutional limits. He has repeatedly declared that

3039 rather than faithfully executing the laws passed by the
3040 legislative branch, he will refuse to take no for an answer,
3041 and that "Where Congress won't act, I will."

3042 These have not been empty proclamations. From Obamacare
3043 to welfare and education reform, to our Nation's drug
3044 enforcement, and immigration laws, President Obama has been
3045 picking and choosing which laws to enforce. But the
3046 Constitution does not confer upon the President the
3047 executive authority to disregard the separation of powers
3048 and write or rewrite acts of Congress. It is a bedrock
3049 principle of constitutional law that the President must
3050 faithfully execute the laws.

3051 The President has no authority to bypass Congress and
3052 unilaterally waive, suspend, or amend the laws based on his
3053 policy preferences. We cannot allow President Obama and
3054 future presidents to ignore the constitutional limits on
3055 executive power. It is up to Congress to check the
3056 President's overreach and restore balance to our system of
3057 government.

3058 That is why I joined with Representative Gowdy and
3059 Chairman Issa to introduce H.R. 4138, the Enforce the Law

3060 Act. This legislation puts a procedure in place to permit
3061 the House or the Senate to authorize lawsuits against the
3062 executive branch for failure to faithfully execute the laws.
3063 The legislation also provides for expedited consideration of
3064 any such lawsuit, first, through a 3-judge panel in the
3065 District Court and then by providing for direct appeal to
3066 the Supreme Court.

3067 The Enforce the Law Act will ensure that cases alleging
3068 institutional injuries to Congress can be brought on behalf
3069 of the institution. The courts have held that lawsuits
3070 alleging institutional injuries must be brought by the
3071 injured institution itself, and H.R. 4138 is solidly in line
3072 with those judicial precedents.

3073 In addition, because it is an act of Congress, the
3074 Enforce the Law Act can apply special court procedural rules
3075 to cases brought pursuant to the legislation. These special
3076 procedural rules can significantly increase the speed at
3077 which cases challenging the President's failure to
3078 faithfully execute the law make their way through the
3079 courts.

3080 The rules in the Enforce the Law Act are similar to

3081 those that were in the Line Item Veto Act. Litigation
3082 challenging the constitutionality of the line item veto
3083 proceeded through the District Court and was decided by the
3084 Supreme Court within 7 months of being filed. The Enforce
3085 the Law Act will help overcome the hostility the courts have
3086 shown toward deciding disputes between the political
3087 branches in the past.

3088 The separation of powers is not strengthened by the
3089 refusal of the judicial branch to referee the division of
3090 power between the branches. H.R. 4138 will encourage their
3091 engagement. The Constitution's framers did not expect the
3092 judiciary to sit on the sidelines and watch as one branch
3093 aggrandized its own powers and exceeded the authority
3094 granted to it by the Constitution. Rather, the Constitution
3095 grants the Federal courts very broad jurisdiction to hear
3096 "all cases arising under this Constitution and the laws of
3097 the United States."

3098 However, over time the courts have read their own powers
3099 much more narrowly, refusing to exercise a vital check over
3100 unconstitutional action by the executive branch. When the
3101 courts refused to step in and umpire these disputes, they

3102 cede the field to this and future presidents. The Enforce
3103 the Law Act will provide statutory guidance to the courts to
3104 reassess their role in preserving the separation of powers.

3105 At our hearing last week, prominent liberal professor
3106 Jonathan Turley warned that "We are in the midst of a
3107 constitutional crisis with sweeping implications for our
3108 system of government. There has been a mass gravitational
3109 shift of authority to the executive branch that threatens
3110 the stability and functionality of our tripartite system."

3111 The Enforce the Law Act will help end the current crisis
3112 and restore balance to our system government. And I urge my
3113 colleagues to support this legislation.

3114 Chairman Goodlatte. For what purpose does the gentleman
3115 from Tennessee seek recognition?

3116 Mr. Cohen. Mr. Chairman, I can understand --

3117 Chairman Goodlatte. Does the gentleman seek to strike
3118 the word?

3119 Mr. Cohen. Strike the last word, yes.

3120 Chairman Goodlatte. The gentleman is recognized for 5
3121 minutes.

3122 Mr. Cohen. I can understand, even though I disagree

3123 with your proposal on why you are for this law. But I
3124 cannot understand why you would be against the amendment.
3125 This President under no wild imagination is not going to
3126 enforce the laws concerning discrimination and protecting
3127 the civil rights of the people of the United States. Why
3128 can we not just have this one?

3129 Chairman Goodlatte. Would the gentleman yield?

3130 Mr. Cohen. And then if something happens where somebody
3131 gets elected from the American Party, we can all come
3132 together to vote to require this to happen. But with the
3133 unlikelihood that some aberrant situation happens that
3134 somebody from the Nazi Party or the American Party wins, we
3135 can deal with this. But with this President, we could just
3136 be nice to each other and understand that civil rights is
3137 special. It takes a particularly high threshold to pass a
3138 bill that causes discrimination because it is a suspect
3139 class, and to treat it as a suspect class here and accept
3140 this amendment.

3141 Chairman Goodlatte. Would the gentleman yield?

3142 Mr. Cohen. Yes, sir.

3143 Chairman Goodlatte. I thank the gentleman for yielding.

3144 If the scenario that you described were to take place and
3145 the Congress were to pass a law, it would have to have the
3146 strength of vote to withstand a veto from a president who
3147 was not enforcing civil rights laws. Every president,
3148 including the current President, has the obligation to
3149 enforce the laws, all the laws, including the civil rights
3150 laws. And those laws are, as you say, special, and they are
3151 deserving of the same protection as any other laws.

3152 So when the Congress increases its ability to hold any
3153 president in check by being able to bring a lawsuit with
3154 improved standing considerations and expedited
3155 consideration, that should apply to civil rights laws as
3156 much as to any other law. And that is why I oppose the
3157 amendment.

3158 Mr. Cohen. Unless the civil rights law interpretation
3159 is some wild outrageous thought that maybe the majority race
3160 was being discriminated against, which sometimes we hear,
3161 which is ludicrous, and this President would not enforce
3162 some situation. I mean, I do not know what it could
3163 possibly be.

3164 But this is just saying the reality of the world is this

3165 bill is going to pass. It is not going to pass the Senate.
3166 Mr. Conyers is a hero of civil rights. He offers this
3167 amendment. Why can you not just take it and move on, let
3168 the bill pass, and let it have its natural death, but for a
3169 few minutes we get along?

3170 Mr. Labrador. Mr. Chairman?

3171 Chairman Goodlatte. The time is controlled by the
3172 gentleman from Tennessee.

3173 Mr. Cohen. I think we should take a moment of silence.
3174 I yield the balance of my time.

3175 Chairman Goodlatte. The chair thanks the gentleman for
3176 yielding back. For what purpose does the gentleman from
3177 Idaho seek recognition?

3178 Mr. Labrador. To strike the last word.

3179 Chairman Goodlatte. The gentleman is recognized for 5
3180 minutes.

3181 Mr. Labrador. I yield my time to the gentleman from
3182 South Carolina, Mr. Gowdy.

3183 Mr. Gowdy. I thank the gentleman from Idaho, and I want
3184 to thank the gentleman from Michigan, for whom I have high
3185 regard. And he is a very highly skilled attorney.

3186 I just want to tell him what my goal is. This amendment
3187 to me essentially is saying the President has to enforce all
3188 the laws, but we really, really, really mean it with respect
3189 to certain categories.

3190 I would love to live in a world and a republic where we
3191 do not need this amendment because the chief executive is
3192 going to enforce all the laws. Why do we need a separate
3193 amendment when we really mean it with election laws, or we
3194 really mean it with anti-discrimination laws, or we really
3195 mean it with any other category of law? Why is the
3196 Constitution not sufficient in and of itself when it says
3197 "faithfully execute the laws?"

3198 The gentleman from Michigan made reference to several
3199 historical fact patterns. Let us be really, really clear:
3200 no chief executive is under any authority, legal or moral,
3201 to defend something that he or she believes is
3202 unconstitutional. And in all of the categories given by the
3203 gentleman from Michigan, that was the case -- clearly
3204 unconstitutional conduct.

3205 This bill does not require a chief executive to enforce
3206 a law that he or she thinks is unconstitutional. But, Mr.

3207 Chairman, with respect to the Affordable Care Act, we went
3208 to great lengths to have the Supreme Court tell us it is
3209 constitutional. We went to tremendous lengths. We argued
3210 it. And then John Roberts shocked everyone by saying, Mr.
3211 President, we agree with you. You lose under the commerce
3212 clause, but we are going to let you win under the taxing
3213 clause. So it is constitutional unlike the example set by
3214 the gentleman from Michigan.

3215 My goal, and I am going to give the time back to the
3216 gentleman from Idaho. I would love to live in a world where
3217 it is enough for us to just say the executive, whether it is
3218 the president, the sheriff, the DA, has to faithfully
3219 execute the law, and we are not going to carve out certain
3220 categories where we really, really mean it. We really,
3221 really meant it the first time the framers said it.

3222 And with that, I would yield back to the gentleman.

3223 Mr. Labrador. Mr. Chairman, I yield back my time.

3224 Chairman Goodlatte. The chair thanks the gentleman.

3225 For what purpose does the gentlewoman from Texas seek
3226 recognition?

3227 Ms. Jackson Lee. I was to strike the last word.

3228 Chairman Goodlatte. The gentlewoman is recognized for 5
3229 minutes.

3230 Mr. Conyers. Would the gentlelady yield to me for very
3231 brief moment --

3232 Ms. Jackson Lee. I would be happy to yield to the
3233 ranking member.

3234 Mr. Conyers. -- because I wanted to tell the previous
3235 speaker, my friend, that my position was simple in that had
3236 the ENFORCE Act been law, the Emancipation Proclamation
3237 could have been subject to unnecessary and unhelpful legal
3238 challenge. The executive order desegregating the military,
3239 the same. And so, there are extreme penalties, dangerous,
3240 unnecessary, that would have occurred under those
3241 circumstances. And I thank the gentlelady for yielding.

3242 Ms. Jackson Lee. My pleasure to yield. I heard earlier
3243 a plea, an entreat, to ask for Democratic members to join on
3244 this very high calling to stop the President in his tracks,
3245 and why we would not be empathetic or sympathetic because of
3246 the obvious ignoring of procedures in the Constitution that
3247 occurred around, in particular, the Iraq War.

3248 And I would offer to say that each of us in our time

3249 will have frustrations with the relevant president. And I
3250 would make the argument that my friends on the other side of
3251 the aisle during the Iraq War did not find it any stretch of
3252 the laws to enter into a major war on behalf of the United
3253 States of America, an extended interpretation of the 2002
3254 resolution that began to be an open door for any acts that
3255 they so desire.

3256 But I want to comment on this particular initiative and
3257 just mention the excessiveness in that it provides for a
3258 lawsuit, as I understand it, except for the question of
3259 standing. There are lawsuits that are filed every day.
3260 Then there is the addition of a special court, the calling
3261 of a 3-judge panel to hear these particular challenges.

3262 My question is, who is the arbiter of members of
3263 Congress filing legislation willy-nilly because they
3264 disagree with the policy aspect of the president's position?
3265 With this President, I would venture to say that my ears
3266 have not heard since 2009 any complimentary comment coming
3267 from the opposition that would even say that there were
3268 moments of drawing together. There were questions after the
3269 capture of Osama bin Laden, although there was a moment of

3270 sunshine when he was captured, as to whether or not this was
3271 a political act. And so, I am concerned that we are passing
3272 legislation that is not procedurally grounded for
3273 constructive supporting or upholding of the constitutional 3
3274 branches of government and the separation of powers. That
3275 is a very valid proposition that we are very serious about.
3276 We know that that is a responsibility of Congress and the
3277 government as it structured.

3278 But if in every moment that the President acts, every
3279 moment, that there is not a yes or can we sit at the table
3280 of collaboration, but a no. If the Speaker comes out 5 days
3281 after a collaborative announcement that we are ready to move
3282 forward with comprehensive immigration reform and then comes
3283 out and indicates that the reason we are not moving forward
3284 is a lack of trust in the President of the United States,
3285 again impacting on the President's or commenting on the
3286 President's integrity, then it makes it difficult to see
3287 this as anything but obstructionism.

3288 And I believe the gentleman's amendment on civil rights
3289 is crucial because if there is anything more precious than
3290 what is protected by the Bill of Rights, which includes the

3291 14th Amendment and the 5th Amendment dealing with due
3292 process and equal protection of the law, and to think that
3293 we would pass a civil rights initiative, a law, and here we
3294 go with obstructionists who are not supportive of civil
3295 rights in this instance, and now they have an expedited
3296 process to the court.

3297 So I am supporting the gentleman's amendment, and
3298 questioning the soundness of the underlying legislation and
3299 would oppose it. With that, I yield.

3300 Chairman Goodlatte. The time of the gentlewoman has
3301 expired. For what purpose does the gentleman from Iowa seek
3302 recognition?

3303 Mr. King. Move to strike the last word.

3304 Chairman Goodlatte. The gentleman is recognized for 5
3305 minutes.

3306 Mr. King. Thank you, Mr. Chairman. I rise in
3307 opposition to this amendment, but probably because I would
3308 like to expand our approach to this. And I am going to make
3309 this confession to the body that some of this debate seems a
3310 little tedious to me. And the reason is because I am
3311 looking at this struggle that is going on between the

3312 executive branch and the legislative branch, and we are
3313 seeking to pass legislation that grants more authority for
3314 Congress to go into an Article 3 court and onto the Supreme
3315 Court to get a resolution of what the Constitution says and
3316 what it means and what the law says and what the law means.

3317 And I would assert that this Constitution does not grant
3318 the Supreme Court the authority to decide these
3319 disagreements between the executive and the legislative
3320 branch of government. That is rooted in *Marbury v. Madison*,
3321 which is an asserted power, not a defined constitutional
3322 power. And the reason I say that is because power itself by
3323 nature is something that if an individual or if an entity
3324 claims power and they are able to assert the power, and if
3325 those who see that happen can see that and allow it to
3326 happen or do not have the ability to interfere with it, then
3327 the assertion of the power becomes something that is then
3328 claimed thereafter.

3329 So, yes, we are going to the Supreme Court when we can
3330 to get them to be the referee between the executive and
3331 legislative branch of government. And it seems a little bit
3332 odd that we are asking the Supreme Court or any Article 3

3333 court that is established by Congress to sort out the
3334 difference. Yes, it needs to happen. I want to see this
3335 happen. I want to go to the court and I get a decision.
3336 But we should not overlook that this Congress also says,
3337 especially in this Judiciary Committee, and specifically
3338 within the Constitution Subcommittee, we say what the
3339 Constitution says, and we say what the Constitution means.

3340 And I do not want to let this body lose sight of that
3341 fact that it is not only the Supreme Court that says what
3342 the Constitution says and what it means, it is not the
3343 President who lectures the Supreme Court in a State of the
3344 Union address on what the Constitution says, but it is also
3345 this Congress. And we ought to have the confidence to know
3346 that when we took an oath to preserve, protect, and defend
3347 this Constitution, the oath to defend this Constitution, it
3348 is not the oath to the Constitution as the President says it
3349 is or the Constitution as the Supreme Court might say it is.
3350 It is the oath to what the Constitution says, the text of
3351 the Constitution, and the convictions in our head and in our
3352 heart that we are taking an oath to.

3353 So I want to reiterate that point that power is

3354 something that can be claimed by anyone or any entity. Look
3355 at what Putin has done in the Crimea over the last few days.
3356 He has asserted power. Well, he has that power because it
3357 has not been challenged.

3358 The President has defined what the Constitution means.
3359 The Supreme Court has backed that up in the case of
3360 Obamacare. But we here in this Congress should not lose
3361 sight of the fact that we define this Constitution,
3362 especially here in this Judiciary Committee. And we are
3363 going to the courts because that is where the power seems to
3364 be. But if the President decides he is not going to abide
3365 by an order of the court, it is the same level of disrespect
3366 for the Constitution as it is when he decides he is not
3367 going to abide by or enforce a law that is duly passed by
3368 this Congress, especially when it is a law like Obamacare
3369 that carries not only his signature, but also his name.

3370 I would yield back the balance of my time, and I thank
3371 the chairman.

3372 Chairman Goodlatte. The question occurs on the
3373 amendment offered by the gentleman from Michigan.

3374 All those in favor, respond by saying aye.

3375 Those opposed, no.

3376 In the opinion of the chair, the ayes have it.

3377 Mr. Conyers. May I have a recorded vote?

3378 Chairman Goodlatte. A recorded vote is requested. The

3379 clerk will call the roll quickly.

3380 Ms. Deterding. Mr. Goodlatte?

3381 Chairman Goodlatte. No.

3382 Ms. Deterding. Mr. Goodlatte votes no.

3383 Mr. Sensenbrenner?

3384 [No response.]

3385 Ms. Deterding. Mr. Coble?

3386 Mr. Coble. No.

3387 Ms. Deterding. Mr. Coble votes no.

3388 Mr. Smith of Texas?

3389 [No response.]

3390 Ms. Deterding. Mr. Chabot?

3391 [No response.]

3392 Ms. Deterding. Mr. Bachus?

3393 [No response.]

3394 Ms. Deterding. Mr. Issa?

3395 [No response.]

3396 Ms. Deterding. Mr. Forbes?
3397 Mr. Forbes. No.
3398 Ms. Deterding. Mr. Forbes votes no.
3399 Mr. King?
3400 Mr. King. No.
3401 Mr. Deterding. Mr. King votes no.
3402 Mr. Franks?
3403 [No response.]
3404 Ms. Deterding. Mr. Gohmert?
3405 Mr. Gohmert. No.
3406 Ms. Deterding. Mr. Gohmert votes no.
3407 Mr. Jordan?
3408 Mr. Jordan. No.
3409 Ms. Deterding. Mr. Jordan votes no.
3410 Mr. Poe?
3411 Mr. Poe. No.
3412 Ms. Deterding. Mr. Poe votes no.
3413 Mr. Chaffetz?
3414 [No response.]
3415 Ms. Deterding. Mr. Marino?
3416 Mr. Marino. No.

3417 Ms. Deterding. Mr. Marino votes no.
3418 Mr. Gowdy?
3419 Mr. Gowdy. No.
3420 Ms. Deterding. Mr. Gowdy votes no.
3421 Mr. Labrador?
3422 Mr. Labrador. No.
3423 Ms. Deterding. Mr. Labrador votes no.
3424 Mr. Farenthold?
3425 Mr. Farenthold. No.
3426 Ms. Deterding. Mr. Farenthold votes no.
3427 Mr. Holding?
3428 Mr. Holding. No.
3429 Ms. Deterding. Mr. Holding votes no.
3430 Mr. Collins?
3431 Mr. Collins. No.
3432 Ms. Deterding. Mr. Collins votes no.
3433 Mr. DeSantis?
3434 Mr. DeSantis. No.
3435 Ms. Deterding. Mr. DeSantis votes no.
3436 Mr. Smith of Missouri?
3437 Mr. Smith of Missouri. No.

3438 Ms. Deterding. Mr. Smith of Missouri votes no.
3439 Mr. Conyers?
3440 Mr. Conyers. Aye.
3441 Ms. Deterding. Mr. Conyers votes aye.
3442 Mr. Nadler?
3443 Mr. Nadler. Aye.
3444 Ms. Deterding. Mr. Nadler votes aye.
3445 Mr. Scott?
3446 Mr. Scott. Aye.
3447 Ms. Deterding. Mr. Scott votes aye.
3448 Ms. Lofgren?
3449 Ms. Lofgren. Aye.
3450 Ms. Deterding. Ms. Lofgren votes aye.
3451 Ms. Jackson Lee?
3452 Ms. Jackson Lee. Aye.
3453 Ms. Deterding. Ms. Jackson Lee votes aye.
3454 Mr. Cohen?
3455 [No response.]
3456 Ms. Deterding. Mr. Johnson?
3457 Mr. Johnson. Aye.
3458 Ms. Deterding. Mr. Johnson votes aye.

3459 Mr. Pierluisi?

3460 Mr. Pierluisi. Aye.

3461 Ms. Deterding. Mr. Pierluisi votes aye.

3462 Ms. Chu?

3463 [No response.]

3464 Ms. Deterding. Mr. Deutch?

3465 [No response.]

3466 Ms. Deterding. Mr. Gutierrez?

3467 [No response.]

3468 Ms. Deterding. Ms. Bass?

3469 [No response.]

3470 Ms. Deterding. Mr. Richmond?

3471 [No response.]

3472 Ms. Deterding. Ms. DelBene?

3473 Ms. DelBene. Aye.

3474 Ms. Deterding. Ms. DelBene votes aye.

3475 Mr. Garcia?

3476 Mr. Garcia. Aye.

3477 Ms. Deterding. Mr. Garcia votes aye.

3478 Mr. Jeffries?

3479 Mr. Jeffries. Aye.

3480 Ms. Deterding. Mr. Jeffries votes aye.

3481 Mr. Cicilline?

3482 Mr. Cicilline. Aye.

3483 Ms. Deterding. Mr. Cicilline votes aye.

3484 Chairman Goodlatte. The gentleman from Alabama?

3485 Mr. Bachus. No.

3486 Ms. Deterding. Mr. Bachus votes no.

3487 Chairman Goodlatte. Are there any other members who

3488 wish to vote who have not voted?

3489 [No response.]

3490 Chairman Goodlatte. The clerk will report.

3491 Ms. Deterding. Mr. Chairman, 11 members voted aye, 16

3492 members voted nay.

3493 Chairman Goodlatte. And the amendment is not agreed to.

3494 The committee will stand in recess for votes and

3495 reconvene immediately after this series of votes.

3496 [Recess.]

3497 Chairman Goodlatte. The committee will reconvene.

3498 Are there further amendments to H.R. 4138?

3499 For what purpose does the gentleman from New York seek

3500 recognition?

3501 Mr. Nadler. I have an amendment at the desk.

3502 Chairman Goodlatte. The clerk will report the
3503 amendment.

3504 Ms. Deterding. Amendment to H.R. 4138, offered by Mr.
3505 Nadler of New York. Page 4, after line 7, insert the
3506 following --

3507 Chairman Goodlatte. Without objection, the amendment
3508 will be considered as read.

3509 [The amendment of Mr. Nadler follows:]

3510

3511 Chairman Goodlatte. And the gentleman is recognized for
3512 5 minutes on his amendment.

3513 Mr. Nadler. Thank you, Mr. Chairman.

3514 My amendment is simple and straightforward. It adds a
3515 new subsection (d) to Section 2 of the bill, to ensure that
3516 the President retains the well-established constitutional
3517 authority to exercise prosecutorial discretion when
3518 enforcing our laws.

3519 H.R. 4138 purports to empower the House and Senate to
3520 file a lawsuit whenever Congress disagrees, when one house
3521 disagrees, with how the executive branch is implementing a
3522 law.

3523 The bill applies to enforcement decisions made by any
3524 officer or employee of the United States, such reaching into
3525 any decision across hundreds of thousands of Federal
3526 statutes, rules, regulations, programs, policies, or other
3527 laws.

3528 H.R. 4138 is a practical nightmare. It invites endless
3529 costly litigation over policy disagreements that do not
3530 raise any legitimate constitutional concerns. We need look
3531 no further than the examples cited by the sponsors of this

3532 bill to see that this is true.

3533 Far from representing a violation of the "take care"
3534 clause, President Obama's decision to delay -- not to refuse
3535 -- enforcement of various deadlines under the Affordable
3536 Care Act are reasonable implementation decisions that are
3537 designed to ensure the ultimate success of the President's
3538 signature law.

3539 Delaying implementation of a complex law is not unusual
3540 or unconstitutional. Indeed, the Congressional Research
3541 Service has provided recent examples of implementation
3542 delays. And I ask that this report be entered into the
3543 record, Mr. Chairman.

3544 Chairman Goodlatte. Without objection, the report will
3545 be made a part of the record.

3546 [The information follows:]

3547

3548 Mr. Nadler. Thank you.

3549 Similarly, the administration setting immigration
3550 enforcement priorities falls well within its exercise of
3551 prosecutorial discretion and raises no legitimate
3552 constitutional concern. The administration's decision to
3553 provide temporary relief from removal for certain DREAMers -
3554 - young adults brought to the United States as children --
3555 complies both with Congress' statutory directive to
3556 establish national immigration enforcement priorities and
3557 with the President's responsibility to exercise
3558 prosecutorial discretion under the "take care" clause of the
3559 Constitution.

3560 While my colleagues now seek to drag the courts into
3561 nonjudiciable political disputes, the fact of the matter is
3562 that no court has ever found delay in implementation of the
3563 law or the routine exercise of criminal and civil
3564 enforcement powers to constitute a violation of the "take
3565 care" clause.

3566 The fact that courts likely will refuse jurisdiction
3567 over lawsuits brought by Congress against the President
3568 demonstrates that, beyond the practical difficulties that it

3569 creates, H.R. 4138 also violates bedrock principles of
3570 constitutional law.

3571 Article II section 3 of the Constitution squarely
3572 commits to the President the duty to "take care that the
3573 laws be faithfully executed."

3574 The Supreme Court has long recognized that this clause
3575 invests the President with broad discretion to determine
3576 when, against whom, how, and even whether, to prosecute
3577 apparent violations of the law.

3578 In Heckler v. Chaney, for example, the court confirmed
3579 this core principle when it recognized that "an agency's
3580 refusal to institute proceedings shares to some extent the
3581 characteristics of a decision of a prosecutor in the
3582 executive branch not to indict, a decision which has long
3583 been regarded as a special province of the executive branch
3584 inasmuch as it is the executive who is charged by the
3585 Constitution to take care that the laws be faithfully
3586 executed."

3587 This means that enforcement decisions, including day-to-
3588 day determinations of whether to bring criminal charges
3589 against a particular defendant based on the specific facts

3590 of a case, agency regulations and decisions on whether and
3591 how to enforce such regulations, and guidelines setting
3592 enforcement priorities for officials charged with enforcing
3593 immigration and civil rights laws, all lie within the sound
3594 discretion of the executive branch.

3595 The injection of Congress and the courts into decisions
3596 that the Constitution squarely commits to the President's
3597 discretion raises significant separation of power concerns.
3598 It also lies beyond the purview of the courts to accept any
3599 such case under the Supreme Court's political question
3600 jurisprudence.

3601 In *Baker v. Carr*, the Supreme Court made clear that the
3602 courts cannot and will not interfere in matters that the
3603 Constitution commits to a coequal branch of government.
3604 Such is the case with executive branch decisions regarding
3605 the faithful execution of our laws, which the Constitution
3606 places in the hands of the President.

3607 The Constitution also provides Congress with the power
3608 to compel executive action without lawsuit, including the
3609 elimination of program funding where the executive branch
3610 has not acted in accordance with Congress' will.

3611 It is, therefore, beyond the power of the courts to
3612 interfere. It is also unnecessary and unconstitutional for
3613 Congress or the courts to do so in the manner proposed by
3614 H.R. 4138.

3615 My amendment seeks to mitigate H.R. 4138's
3616 unconstitutional encroachment into the President's authority
3617 to faithfully execute the law by adding a new subsection (d)
3618 to ensure that nothing in H.R. 4138 "limits or otherwise
3619 affects the clearly established constitutional authority of
3620 the executive branch to exercise prosecutorial discretion."

3621 My amendment cures one of H.R. 4138's many
3622 constitutional infirmities. I urge all of my colleagues to
3623 support it.

3624 And let me make clear that I believe that even without
3625 the amendment, we lack the constitutional right to limit the
3626 President's exercise of prosecutorial discretion. But this
3627 amendment at least would make clear that this bill does not
3628 attempt to do so in an unconstitutional manner.

3629 So I urge all my colleagues to vote for it. I thank
3630 you, and I yield back the balance of my time.

3631 Chairman Goodlatte. For what purpose does the gentleman

3632 from South Carolina seek recognition?

3633 Mr. Gowdy. Move to strike the last word.

3634 Chairman Goodlatte. The gentleman is recognized for 5
3635 minutes.

3636 Mr. Gowdy. Mr. Chairman, I have scoured the
3637 Constitution in search of this phrase that our friend from
3638 New York has come up with, "prosecutorial discretion." I
3639 can't find it.

3640 I can find the pardon power. I can find the D.C. Court
3641 of Appeals case that is squarely on point, which my friend
3642 from New York has not made reference to, In re Aiken. Part
3643 of the holding in that is as follows, Mr. Chairman:
3644 Prosecutorial discretion encompasses the executive power to
3645 decide whether to bring charges, seek punishment, penalties,
3646 or sanctions.

3647 It does not include the power to disregard other
3648 statutory obligations.

3649 Prosecutorial discretion encompasses the power not to
3650 enforce a law against private parties. It does not
3651 encompass the discretion not to follow a law imposing a
3652 mandate or prohibition on the executive branch itself.

3653 To argue otherwise is to totally unsettle the division
3654 of power among the branches.

3655 So there is no definition of prosecutorial discretion in
3656 the gentleman's amendment. I don't know whether he is
3657 talking about prohibitive statutes or mandatory statutes.
3658 If what he means is that a prosecutor doesn't have to pursue
3659 charges when he or she doesn't think they have evidence, we
3660 already know that. If what he is saying is that the chief
3661 executive, despite there being a clear law that says you
3662 have to file a tax return by April 15th or April 16th, that
3663 that can be summarily suspended, that is nowhere in the text
3664 of the Constitution, and he can't cite a single case to
3665 support it.

3666 With that --

3667 Mr. Nadler. Will the gentleman yield?

3668 Mr. Gowdy. I am happy to yield, if you want to define
3669 for me what "prosecutorial discretion" means specifically in
3670 reference to In re Aiken.

3671 Mr. Nadler. Well, I am not familiar with In re Aiken,
3672 but I can define prosecutorial discretion.

3673 Certainly, it is not the ability to defy or ignore a

3674 statute. We are not talking about that.

3675 But in Heckler v. Chaney, as I quoted, it recognizes an
3676 agency's refusal to institute proceedings; shares, to some
3677 extent, the characteristics of a decision of a prosecutor in
3678 the executive branch, not to indict. I read a little bit
3679 more of the quote before.

3680 Now, what that means, what I mean by "prosecutorial
3681 discretion" is the decision by the executive branch not to
3682 indict, not to bring a deportation proceeding --

3683 Mr. Gowdy. Against a private person. Well, that is
3684 clear. That is settled law.

3685 Mr. Nadler. Then you should have no problem with my
3686 amendment.

3687 Mr. Gowdy. No, no, no, no.

3688 Mr. Nadler. I think it is settled law.

3689 Mr. Gowdy. No, no, no, no.

3690 When you say "prosecutorial discretion," and then you
3691 begin to discuss the different categories that have been
3692 debated today, it does not include -- prosecutorial
3693 discretion does not include the right to summarily dispense
3694 with laws that dictate to the executive branch, "You must do

3695 something by a certain date."

3696 Mr. Nadler. No one says it does.

3697 Mr. Gowdy. That is anarchy. That is not prosecutorial
3698 discretion.

3699 Mr. Nadler. No one says it does.

3700 Chairman Goodlatte. Will the gentleman yield?

3701 Mr. Gowdy. I would be happy to yield to the gentleman
3702 from Virginia.

3703 Mr. Nadler. You are defining that that way. I am not.

3704 Chairman Goodlatte. The gentleman has yielded to me.

3705 The base bill does nothing to abrogate prosecutorial
3706 discretion. The bill, by its clear terms, applies only to
3707 policies of nonenforcement of the law. Adopting this
3708 amendment would actually produce a dangerous negative
3709 implication by implying falsely that the bill limits
3710 prosecutorial discretion when it does not.

3711 So I urge rejection.

3712 Mr. Nadler. Would the gentleman yield?

3713 Mr. Gowdy. If I have any time.

3714 Mr. Nadler. If the chairman says that the bill does not
3715 inhibit prosecutorial discretion, there should be no

3716 objection to making that clear through adoption of this
3717 amendment.

3718 It would not have a negative implication. It would
3719 simply say we are not doing anything to prosecutorial
3720 discretion.

3721 Mr. Gowdy. Reclaiming my time, if what Congress passed
3722 made things clear, we wouldn't be having this debate,
3723 because we have been very, very clear on a number of things
3724 that the executive branch has summarily dismissed.

3725 So while, in theory, I would love to take the gentleman
3726 at his word that if we just made something clear, everyone
3727 would follow it. If that were true, we would not be having
3728 this debate.

3729 With that, I would yield back.

3730 Chairman Goodlatte. The chair thanks the gentleman, and
3731 recognizes himself in opposition to the amendment.

3732 It is not clear, because for one thing, there is no
3733 definition of what "prosecutorial discretion" is in the
3734 amendment. So we are going to complicate a situation that
3735 is not complicated now because the bill does not abrogate
3736 prosecutorial discretion. And therefore, at best, the

3737 gentleman's amendment is a truism.

3738 It does not, however, solve the problem that the
3739 gentleman thinks exists, which we disagree exists, because
3740 it doesn't define what it is that it is trying to protect.

3741 So I yield back.

3742 Who else seeks time?

3743 The question occurs on the amendment.

3744 Mr. Conyers. I do.

3745 Chairman Goodlatte. The gentleman from Michigan is
3746 recognized for 5 minutes.

3747 Mr. Conyers. Thank you so much.

3748 Members of the committee, I haven't discussed this with
3749 our distinguished colleague on the Constitution Subcommittee
3750 about his amendment, but let me ask you, Mr. Nadler, isn't
3751 this attempt an effort to make a fundamentally flawed
3752 concept a little bit better?

3753 Mr. Nadler. I thank you for the question. The answer
3754 is yes. It attempts to clarify what the chairman says is
3755 true.

3756 And I don't know what he has against truisms, by the
3757 way. I don't have anything against truisms.

3758 But it attempts to clarify that this bill, whatever else
3759 it does do, does not eliminate prosecutorial discretion.
3760 And if, as the chairman says, and as Mr. Gowdy says, it does
3761 not, I don't understand the opposition to the amendment. It
3762 should make it clear, so no one wonders.

3763 And if it is already in the bill, then it is harmless to
3764 be specific.

3765 Mr. Gowdy. Could I ask a question of the gentleman?

3766 Mr. Conyers. I have the time. The answer is yes.

3767 Mr. Gowdy. What do you mean by "prosecutorial
3768 discretion"? Does it apply to all categories of statutes?

3769 Can the chief executive, in theory, not enforce an
3770 election law, if he doesn't have to enforce a health care
3771 law?

3772 Mr. Nadler. No, no, no. Prosecutorial discretion has
3773 nothing to do with enforcement of a law. It has to do with
3774 the decision to bring or not to bring a proceeding of an
3775 enforcement nature.

3776 Mr. Gowdy. Only in the criminal context?

3777 Mr. Nadler. No, not necessarily in the criminal
3778 context.

3779 Mr. Gowdy. Give me a context outside the criminal
3780 context where prosecutorial discretion would apply that
3781 doesn't obviate the general rule you have to abide by the
3782 law.

3783 Mr. Nadler. A perfect example, should a deportation
3784 proceeding be initiated against an individual? It is well
3785 settled that the executive has the ability to decide to do
3786 so or not to do so.

3787 Mr. Gowdy. But that is a private person.

3788 Mr. Nadler. It is not a prosecution.

3789 Mr. Gowdy. Well, it is quasi. It is quasi.

3790 Mr. Nadler. Or whether to bring an enforcement action
3791 against Duke Energy on an alleged environmental violation.

3792 Mr. Gowdy. Well, and what is interesting is In re Aiken
3793 dealt with the Nuclear Regulatory Agency and the fact that
3794 they will not do what Congress has told them to do. And
3795 someone asked for a mandamus to force them to do it. And
3796 the D.C. Court of Appeals said you have to.

3797 Mr. Conyers. I thank the gentleman for using up as much
3798 time as I have given him.

3799 Mr. Nadler. Will the gentleman yield for a moment?

3800 Mr. Conyers. Yes.

3801 Mr. Nadler. I would simply say that what the gentleman
3802 from South Carolina just said is evidence that the existing
3803 Administrative Procedure Act provides ample power and
3804 protection in this respect.

3805 And I yield back.

3806 Mr. Conyers. Let me ask the gentleman from New York
3807 about President George W. Bush temporarily suspending
3808 sanctions on the employment of unauthorized aliens in areas
3809 affected by Hurricane Katrina, and directed agents and
3810 officers to exercise prosecutorial discretion with respect
3811 to nursing mothers.

3812 Mr. Nadler. I am not that familiar, but it sounds like
3813 an intelligent and wise application of prosecutorial
3814 discretion, which this bill without this amendment would
3815 probably say you couldn't do.

3816 And by the way, it also illustrates that all this
3817 rhetoric about tyranny by the current President, by
3818 President Obama, and virtual abrogation of the law, is
3819 ridiculous.

3820 I don't see that he has gone any further than previous

3821 Presidents. In many respects, he hasn't.

3822 But the use of prosecutorial discretion of deciding when
3823 to bring an enforcement proceeding and when not, is well-
3824 established. And you can debate the wisdom. It sounds like
3825 that instance with President Bush, I would agree with, it
3826 sounds like. But you can debate the wisdom, but not the
3827 ability of a President to not bring a proceeding, to
3828 exercise his discretion and not bring a proceeding, whether
3829 it is an enforcement proceeding or a deportation proceeding
3830 or a criminal proceeding.

3831 Mr. Conyers. Well, my impression is that the amendment
3832 aims toward providing that nothing in the act limits or
3833 otherwise affects the clearly established constitutional
3834 authority of the executive branch to exercise prosecutorial
3835 discretion.

3836 Mr. Nadler. That is what the amendment says.

3837 And by the way, I would say to Mr. Gowdy, if Congress
3838 passed a statute that said that in every single case where
3839 X, Y, and Z occurred, the executive branch must do the
3840 following, you would not have prosecutorial discretion.

3841 Chairman Goodlatte. The time of the gentleman has

3842 expired.

3843 Without objection, the gentleman is recognized for an
3844 additional minute.

3845 Mr. Conyers. Well, thank you very much.

3846 I would just like the members of the committee to know
3847 that this is not a reversal of our position about the matter
3848 at hand, but really trying to make a matter a little bit
3849 more acceptable.

3850 We think that this amendment would help make an
3851 unfortunate proposal a little bit better. And even with its
3852 passage, I am not at all sure if I can vote to support the
3853 ENFORCE Act anyway.

3854 Chairman Goodlatte. I am sure.

3855 Mr. Conyers. You are sure. All right.

3856 And thank you, Mr. Chairman, for the additional time. I
3857 yield back.

3858 Chairman Goodlatte. The question occurs on the
3859 amendment offered by -- for what purpose does the
3860 gentlewoman from Texas seek recognition?

3861 Ms. Jackson Lee. To comment on the amendment.

3862 Chairman Goodlatte. The gentlewoman is recognized for 5

3863 minutes. You may want to turn on your microphone.

3864 Ms. Jackson Lee. That might be a good idea. Thank you,
3865 Mr. Chairman.

3866 I want to emphasize one point that I know has been
3867 reiterated by the proponent and author of this legislation,
3868 and that is the crucial aspect of prosecutorial discretion
3869 as part of the President's authority that is given in the
3870 respect of the separation of powers.

3871 I see no reason to not ensure in the ENFORCE amendment
3872 that that is clearly protected. And I ask my colleagues, in
3873 their intent to reinforce trust that they say is diminished
3874 through the President's actions, I would argue to them that
3875 trust is valuable, but the preserving of constitutional
3876 delineated rights of the executive, the judiciary, and the
3877 legislature is crucial as well. And the President and the
3878 executive has had prosecutorial discretion.

3879 There are pardon powers. There are clemency powers.
3880 And those powers are delineated through the separate branch
3881 of government known as the executive.

3882 I would ask my colleagues to vote for this amendment,
3883 the Nadler amendment, and I yield back.

3884 Chairman Goodlatte. The question occurs on the
3885 amendment offered by the gentleman from New York.
3886 All those in favor, respond by saying aye.
3887 Those opposed, no.
3888 In the opinion of the chair, the noes have it.
3889 The amendment is not agreed to.
3890 The gentleman requests a recorded vote, and the clerk
3891 will call the roll.
3892 Ms. Deterding. Mr. Goodlatte?
3893 Chairman Goodlatte. No.
3894 Ms. Deterding. Mr. Goodlatte votes no.
3895 Mr. Sensenbrenner?
3896 [No response.]
3897 Ms. Deterding. Mr. Coble?
3898 Mr. Coble. No.
3899 Ms. Deterding. Mr. Coble votes no.
3900 Mr. Smith of Texas?
3901 Mr. Smith of Texas. No.
3902 Ms. Deterding. Mr. Smith of Texas votes no.
3903 Mr. Chabot?
3904 Mr. Chabot. No.

3905 Ms. Deterding. Mr. Chabot votes no.
3906 Mr. Bachus?
3907 Mr. Bachus. No.
3908 Ms. Deterding. Mr. Bachus votes no.
3909 Mr. Issa?
3910 Mr. Issa. No.
3911 Ms. Deterding. Mr. Issa votes no.
3912 Mr. Forbes?
3913 [No response.]
3914 Ms. Deterding. Mr. King?
3915 [No response.]
3916 Ms. Deterding. Mr. Franks?
3917 Mr. Franks. No.
3918 Ms. Deterding. Mr. Franks votes no.
3919 Mr. Gohmert?
3920 [No response.]
3921 Ms. Deterding. Mr. Jordan?
3922 Mr. Jordan. No.
3923 Ms. Deterding. Mr. Jordan votes no.
3924 Mr. Poe?
3925 [No response.]

3926 Ms. Deterding. Mr. Chaffetz?

3927 [No response.]

3928 Ms. Deterding. Mr. Marino?

3929 [No response.]

3930 Ms. Deterding. Mr. Gowdy?

3931 Mr. Gowdy. No.

3932 Ms. Deterding. Mr. Gowdy votes no.

3933 Mr. Labrador?

3934 Mr. Labrador. No.

3935 Ms. Deterding. Mr. Labrador votes no.

3936 Mr. Farenthold?

3937 Mr. Farenthold. No.

3938 Ms. Deterding. Mr. Farenthold votes no.

3939 Mr. Holding?

3940 Mr. Holding. No.

3941 Ms. Deterding. Mr. Holding votes no.

3942 Mr. Collins?

3943 [No response.]

3944 Ms. Deterding. Mr. DeSantis?

3945 Mr. DeSantis. No.

3946 Ms. Deterding. Mr. DeSantis votes no.

3947 Mr. Smith of Missouri?

3948 [No response.]

3949 Ms. Deterding. Mr. Conyers?

3950 Mr. Conyers. Aye.

3951 Ms. Deterding. Mr. Conyers votes aye.

3952 Mr. Nadler?

3953 Mr. Nadler. Aye.

3954 Ms. Deterding. Mr. Nadler votes aye.

3955 Mr. Scott?

3956 Mr. Scott. Aye.

3957 Ms. Deterding. Mr. Scott votes aye.

3958 Ms. Deterding. Ms. Lofgren?

3959 Ms. Lofgren. Aye.

3960 Ms. Deterding. Ms. Lofgren votes aye.

3961 Ms. Jackson Lee?

3962 Ms. Jackson Lee. Aye.

3963 Ms. Deterding. Ms. Jackson Lee votes aye.

3964 Mr. Cohen?

3965 Mr. Cohen. Aye.

3966 Ms. Deterding. Mr. Cohen votes aye.

3967 Mr. Johnson?

3968 [No response.]

3969 Ms. Deterding. Mr. Pierluisi?

3970 Mr. Pierluisi. Aye.

3971 Ms. Deterding. Mr. Pierluisi votes aye.

3972 Ms. Chu?

3973 [No response.]

3974 Ms. Deterding. Mr. Deutch?

3975 [No response.]

3976 Ms. Deterding. Mr. Gutierrez?

3977 [No response.]

3978 Ms. Deterding. Ms. Bass?

3979 [No response.]

3980 Ms. Deterding. Mr. Richmond?

3981 [No response.]

3982 Ms. Deterding. Ms. DelBene?

3983 Ms. DelBene. Aye.

3984 Ms. Deterding. Ms. DelBene votes aye.

3985 Mr. Garcia?

3986 Mr. Garcia. Aye.

3987 Ms. Deterding. Mr. Garcia votes aye.

3988 Mr. Jeffries?

3989 Mr. Jeffries. Aye.

3990 Ms. Deterding. Mr. Jeffries votes aye.

3991 Mr. Cicilline?

3992 Mr. Cicilline. Aye.

3993 Ms. Deterding. Mr. Cicilline votes aye.

3994 Chairman Goodlatte. The gentleman from Virginia?

3995 Mr. Forbes. No.

3996 Ms. Deterding. Mr. Forbes votes no.

3997 Chairman Goodlatte. The gentleman from Iowa?

3998 Mr. King. No.

3999 Ms. Deterding. Mr. King votes no.

4000 Chairman Goodlatte. The gentleman from Georgia?

4001 Mr. Collins. No.

4002 Ms. Deterding. Mr. Collins votes no.

4003 Chairman Goodlatte. The gentleman from Missouri?

4004 Mr. Smith of Missouri. No.

4005 Ms. Deterding. Mr. Smith of Missouri votes no.

4006 Chairman Goodlatte. Are there other members who wish to
4007 vote who have not voted?

4008 The clerk will report.

4009 Ms. Deterding. Mr. Chairman, 11 members voted aye; 17

4010 members voted nay.

4011 Chairman Goodlatte. And the amendment is not agreed to.

4012 Are there further amendments to this legislation?

4013 Ms. Jackson Lee. I have an amendment at the desk.

4014 Chairman Goodlatte. The clerk will report the amendment
4015 of the gentlewoman from Texas.

4016 The gentlewoman is advised that they do not have an
4017 amendment at the desk.

4018 Now they do.

4019 Ms. Deterding. Amendment to H.R. 4138, offered by Ms.
4020 Jackson Lee. Page 4, after line 7, insert the following --

4021 Chairman Goodlatte. Without objection, the amendment
4022 will be considered as read.

4023 [The amendment of Ms. Jackson Lee follows:]

4024

4025 Chairman Goodlatte. And the gentlewoman is recognized
4026 on her amendment for 5 minutes.

4027 Ms. Jackson Lee. I thank the chairman for the time.

4028 And I just want to try to summarize what we have been
4029 doing all day, and I will take an opportunity to speak for
4030 my colleagues, and hope that I find myself on the right side
4031 of the interpretation of the discussion that I have heard by
4032 Democratic members.

4033 I have never found a member of our side of the aisle
4034 that would want to stamp on the importance of separation of
4035 powers, the three branches of government, and the
4036 constitutional protection.

4037 Sometimes as I listen to the discussion, I must pause
4038 for a moment to make sure that there is clarity, that there
4039 is no doubt that we respect the separation of powers. And
4040 if my colleagues on the other side of the aisle were working
4041 to have a deliberative discussion on the separation of
4042 powers across all Presidents that have occurred, that have
4043 served office in the last 2 decades or the last 25 years,
4044 this would be a reasonable debate, because there are no
4045 greater holders of the Constitution than, I think, members

4046 of this Judiciary Committee, whether I agree or disagree
4047 with your policy, both Republicans and Democrats.

4048 And it is our job and our responsibility to ensure that
4049 Congress' powers are protected and that we represent the
4050 people.

4051 But I believe that the opposition that is so strong by
4052 those of us on this side of the aisle is because we cannot
4053 find any substance, any basis to this legislation, except
4054 for the opposition on policy, not on laws. The President
4055 has not abused any laws. He has not been excessive in his
4056 authority that does not have basis in the Constitution and
4057 his executive power.

4058 Now, we may not like it, as I did not like signing
4059 statements that the last administration used over and over
4060 again. And what we did was, we introduced legislation,
4061 never to be heard, obviously, because most of the period of
4062 that time, the Congress was in the hands of the Republicans.

4063 So if this was a deliberative process, we might have
4064 agreement that we must find a way to ensure overall that the
4065 separation of powers is protected.

4066 But my amendment again tries to bring some clarity to a

4067 confused point of view. And it simply protects the ability
4068 of the executive branch to comply with judicial decisions
4069 interpreting the Constitution or Federal laws.

4070 I can't tell whether the ENFORCE Act is suggesting that
4071 the President cannot enforce that interpretation. It is
4072 hard to believe that I would even need this amendment, which
4073 instructs the executive branch that it is okay to enforce
4074 the law as interpreted by the courts.

4075 If separation of power principles require anything, it
4076 is that each branch must respect its constitutional role.

4077 When a court issues a decision interpreting the
4078 Constitution or Federal law, the other branches must abide
4079 by the decision. The executive branch's ability to fulfill
4080 its obligation to comply with judicial decisions should not
4081 be hampered by a civil action by Congress pursuant to this
4082 bill, particularly if we are in an emergency circumstance
4083 that the legislation being interpreted is going through
4084 regular order, as did the Affordable Care Act. And those
4085 who did not participate chose not to participate.

4086 Basic respect for separation of powers requires adoption
4087 of this amendment.

4088 That is exactly what the bill is doing, in seeking to
4089 usurp the powers of the President, particularly President
4090 Obama. My colleagues, some of whom are former prosecutors,
4091 have put forth a piece of legislation that wants to snuff
4092 out established separation of powers and the authority given
4093 to the President under the Constitution, but more
4094 importantly, in my amendment, the responsibilities to
4095 enforce the law by enforcing interpretation by the courts of
4096 a statute or a constitutional question.

4097 So my amendment is to clarify that you do not intend by
4098 this bill to thwart the President's responsibility of
4099 complying with an interpretation that has been made that
4100 requires the support of the Constitution.

4101 With that, I yield back my time and ask my colleagues to
4102 support the Jackson Lee amendment.

4103 Chairman Goodlatte. The time of the gentlewoman has
4104 expired.

4105 For what purpose does the gentleman from South Carolina
4106 seek recognition?

4107 Mr. Gowdy. Move to strike the last word.

4108 Chairman Goodlatte. The gentleman is recognized for 5

4109 minutes.

4110 Mr. Gowdy. Mr. Chairman, I was just wondering if the
4111 gentlelady from Texas could tell me the constitutional
4112 authority for suspending application of the mandatory
4113 minimum drug laws.

4114 Ms. Jackson Lee. First of all, we have passed
4115 legislation --

4116 Mr. Gowdy. I was looking for a reference or cite in the
4117 Constitution.

4118 Ms. Jackson Lee. -- in this body, and, therefore, a
4119 bill that was signed by the President that reduced the
4120 sentencing --

4121 Mr. Gowdy. That actually wasn't my question. My
4122 question is, the law currently provides for mandatory
4123 minimums, and the Attorney General has said he is not going
4124 to enforce that law. What is the constitutional authority
4125 for doing that?

4126 Ms. Jackson Lee. If you would allow me to finish, and
4127 then I will offer my thoughts on the constitutional
4128 authority.

4129 Mr. Gowdy. I asked for a specific cite in the

4130 Constitution for the authority.

4131 Ms. Jackson Lee. As I indicated, my amendment deals
4132 with Federal statute and the Constitution, and I indicated
4133 that if the President is supporting and interpreting a law,
4134 or the Constitution gives him authority, then he is within
4135 his powers to do so. And I --

4136 Mr. Gowdy. Reclaiming my time for another question,
4137 what about a bill that has already been to the Supreme
4138 Court, where its constitutionality was affirmed -- *Sebelius*
4139 *v. NFIB* -- and yet again today is another waiver of a
4140 deadline. What is the constitutional authority for waiving
4141 a statutory deadline in a bill that has already passed
4142 constitutional muster?

4143 Ms. Jackson Lee. Are you speaking about the Black
4144 legislation? What are you talking about?

4145 Mr. Gowdy. I was talking about the fact that the
4146 President yet again is going to delay implementation of a
4147 law that he fought hard to have declared constitutional. In
4148 *Sebelius v. NFIB*, there is yet another delay.

4149 And I am wondering, are there any limits on the
4150 executive branch's authority to suspend application of the

4151 law?

4152 Ms. Jackson Lee. I do believe there are limits. The
4153 limits are, if it were to do harm. If the President is
4154 interpreting -- you have already indicated that the
4155 Affordable Care Act has been declared constitutional. It
4156 did not, however, narrow the President's interpretation of
4157 that law, and to make that law more effective for the
4158 people, which he is serving and we are serving.

4159 I consider that within the discretion of the President.

4160 Mr. Gowdy. But why not go back -- reclaiming my time --

4161 Ms. Jackson Lee. He is not altering the law. He is
4162 just delaying a portion thereof.

4163 Mr. Gowdy. Reclaiming my time, why not come back to the
4164 legislative body that passed the law in the first instance?

4165 I am just trying to find the constitutional authority under
4166 which a chief executive, if he thinks a law is not going to
4167 be maybe implemented precisely as it might benefit him with
4168 the vicissitudes of election cycles, to summarily decide
4169 when to implement it and when not. There is no
4170 constitutional basis for that whatsoever.

4171 Ms. Jackson Lee. Will the gentleman yield?

4172 Mr. Gowdy. Sure.

4173 Ms. Jackson Lee. Maybe the atmosphere is so toxic after
4174 50 attempts to repeal the law that, in order for the
4175 President to have a reasoned way to respond to concerns, he
4176 is using his appropriate discretion interpreting the law.
4177 And I think we all interpret the law and there is no
4178 opposition --

4179 Mr. Gowdy. Reclaiming my time, I want to compliment the
4180 gentlelady from Texas, because she is exactly right.

4181 The only authority he has is politics is exactly what
4182 you just said. Because this body, he thinks, won't go along
4183 with what he wants to do, he is going to do it himself.

4184 And that is our very point. That is not the way this
4185 system was set up.

4186 Mr. Garcia. If the gentleman would yield?

4187 Mr. Gowdy. I would be happy to yield to my friend from
4188 Florida.

4189 Mr. Garcia. The President has ample authority. He just
4190 passed this law. He was reelected on this law. The
4191 opposition --

4192 Mr. Labrador. He didn't pass the law.

4193 Mr. Gowdy. I am sorry?

4194 Mr. Labrador. If the gentleman would yield, it is
4195 Congress that passed the law.

4196 Mr. Gowdy. No, no. He signed the law.

4197 Mr. Labrador. The problem we are having here is that
4198 your side thinks that it is the President who passes the law
4199 and can enforce the law.

4200 Mr. Gowdy. Thank you for the constitutional lesson. I
4201 am --

4202 Chairman Goodlatte. The time of the gentleman has
4203 expired.

4204 Without objection, the gentleman is recognized for an
4205 additional minute.

4206 Mr. Gowdy. I am happy to give my time to my friend from
4207 Florida.

4208 Mr. Garcia. Thank you.

4209 My point being is that as we have watched the
4210 Constitution operate for 200-plus years, the reality is the
4211 President passed this law. The Congress passed this law;
4212 the President signed the law, so we can be more specific;
4213 and the law comes into place.

4214 An election was run on this law, and the President to
4215 implement this law has jurisdiction. He always has. As
4216 executive, we have our granted that jurisdiction. And that
4217 is part of what you may be disagreeing with, but coming to
4218 this Congress would be a waste of time because you couldn't
4219 get any clarity anyway.

4220 What he is trying to do is make the law work.

4221 Mr. Gowdy. And that is my point. Because it is
4222 legislatively difficult, that somehow gives him the
4223 authority to not do what the Framers intended. And, I would
4224 say, to my friend from Florida, who is my friend, I like the
4225 gentleman from Florida.

4226 Mr. Garcia. As I like the gentleman also.

4227 Mr. Gowdy. Well, thank you.

4228 But I would just say this, I wasn't here under any
4229 previous administration, and I probably won't live long
4230 enough to see another Republican administration. But I will
4231 tell you this, if there is a Republican AG or President that
4232 is not following the law, I would be the very first one to
4233 stand beside you and say, "Mr. President, you have a duty to
4234 do so."

4235 And I am just simply asking my fair-minded friends on
4236 the other side to stand up for the institution. That is all
4237 this bill says, is that we have standing to make sure what
4238 we pass is enforced. That is all this is doing.

4239 I promise you, I would help you do it, if the roles were
4240 reversed. I am just wondering where the help is on this
4241 one.

4242 And with that, I would yield back.

4243 Chairman Goodlatte. For what purpose does the gentleman
4244 from Rhode Island seek recognition?

4245 Mr. Cicilline. Move to strike the last word.

4246 Chairman Goodlatte. The gentleman is recognized for 5
4247 minutes.

4248 Mr. Cicilline. I just want to respond to the
4249 gentleman's question about the source of prosecutorial
4250 discretion in the Constitution. I would just like to read
4251 the following: "The judicial branch has traditionally
4252 accorded Federal prosecutors broad latitude in making a
4253 range of investigatory and prosecutorial determinations,
4254 including when, whom, and whether to prosecute particular
4255 violations of Federal law. The doctrine of 'prosecutorial

4256 discretion' --

4257 Chairman Goodlatte. Your microphone is not working.

4258 Mr. Cicilline. -- "has a long historical pedigree, the
4259 early roots of which can be traced at least to a Sixteenth
4260 Century English common law procedural mechanism known as
4261 the nolle prosequi. In the early English legal system,
4262 criminal prosecutions were generally initiated by private
4263 individuals rather than public prosecutors.

4264 Chairman Goodlatte. For the ability of the court
4265 reporter, perhaps you should move to another microphone.

4266 Mr. Cicilline. They turned off our whole side. Okay.

4267 "Notwithstanding the historical background, the modern
4268 doctrine of prosecutorial discretion derives more from our
4269 constitutional structure than English common law. The exact
4270 justification for the doctrine does not appear to have been
4271 explicitly established. Generally, courts have
4272 characterized prosecutorial discretion as a function of some
4273 mixture of the separation of powers, the 'take care' clause,
4274 or the duties of a prosecutor as an appointee of the
4275 President. Moreover, both Federal and State courts have
4276 ruled that the exercise of prosecutorial discretion is an

4277 executive function necessary to the proper administration of
4278 justice. Given these precedents, prosecutorial discretion
4279 may be appropriately characterized as a constitutionally
4280 based doctrine."

4281 And there is a list of about 14 citations for this.

4282 Mr. Labrador. Would the gentleman yield?

4283 Mr. Cicilline. Of course.

4284 Mr. Labrador. Okay, so if I don't like the enforcement
4285 of the tax laws, and I become the President of the United
4286 States, God save us, can I just decide not to enforce any
4287 tax prosecutions?

4288 Mr. Cicilline. Well, it is pretty clear that you have
4289 the right as the prosecutor in a prosecution --

4290 Mr. Labrador. So this is a specific example. If I
4291 decide I don't want to enforce any of the tax laws, and I
4292 don't want anybody to actually be prosecuted for failing to
4293 pay their taxes, can I do that, as President of the United
4294 States?

4295 Mr. Cicilline. The executive branch has exclusive
4296 authority and absolute discretion to decide whether to
4297 prosecute a case, and that is United States v. Goodwin,

4298 which is a 1982 --

4299 Mr. Labrador. And that is on a case-by-case basis.

4300 Mr. Cicilline. Well, I don't think anybody is arguing
4301 for the wholesale nonenforcement of law.

4302 Mr. Labrador. But that is what -- if the gentleman
4303 would yield, that is exactly what is happening in the
4304 instances that we have been debating.

4305 Mr. Cicilline. Reclaiming my time, the argument is that
4306 the prosecution has a right in the ordinary course of the
4307 administration of justice to exercise discretion. It is a
4308 central part of their function.

4309 Mr. Labrador. Would the gentleman yield?

4310 Mr. Cicilline. Let me just finish.

4311 And no one is arguing that there should be a wholesale
4312 lack of enforcement of all the criminal laws or the tax
4313 code. I think that is an absurdity.

4314 But certainly, discretion is central to the fair
4315 administration of justice.

4316 I am happy to yield.

4317 Mr. Labrador. I agree with you that there is
4318 prosecutorial discretion allowed in the laws, but this is

4319 different. What this administration had done is they have
4320 done a wholesale discretion. They just did it with
4321 Obamacare again today. They have done it with immigration
4322 laws.

4323 They are not doing it on a case-by-case basis, like the
4324 courts have said that they have the authority to do. That
4325 is why we are trying to pass this law.

4326 And what Mr. Gowdy said, I agree with a hundred percent.
4327 I would be here defending your right to pass a piece of
4328 legislation like this one, because I was upset that the Bush
4329 administration got away with so many things. It is one of
4330 the reasons that I came to Congress, and I have said this
4331 twice today.

4332 So it surprises me that on your side of the aisle, who
4333 complained so much about the Bush administration -- in fact,
4334 you had impeachment papers drafted on Bush, on Gonzales, and
4335 on Vice President Cheney -- that you are not doing the same
4336 thing. You are not --

4337 Mr. Cicilline. Reclaiming my time, I don't think
4338 anybody is arguing for the kind of -- nor has the
4339 administration, of course, exercised that sort of

4340 discretion, broadly.

4341 I think the notion that the solution to this for the
4342 American people is to allow Congress to sue the President as
4343 a way to provide further dysfunction to the Congress of the
4344 United States is a terrible idea, and I --

4345 Mr. Labrador. Would the gentleman yield for a question?

4346 Mr. Cicilline. Sure.

4347 Mr. Labrador. So I have heard several times from the
4348 other side that we haven't had a single case adjudicate that
4349 the President's actions violate the Constitution.

4350 Well, if we can't file the lawsuit, how are we going to
4351 find out from the courts if it violates the Constitution or
4352 not? That is all we are trying to do, is having the
4353 opportunity and ability to go to a Federal court and
4354 determine whether --

4355 Mr. Cicilline. Reclaiming my time to answer the
4356 question, certainly, if this were in fact a real problem, I
4357 think we would have to search for solution. There is no
4358 evidence that this is actually a problem.

4359 So what I would suggest is that the solution you
4360 proposed would create chaos in our constitutional system,

4361 would create a system in which routinely Congress would be
4362 suing the President of the United States if we disagreed
4363 with actions of the exercise of discretion by the executive
4364 branch.

4365 And I think that would be chaotic. The basis for it in
4366 the Constitution, I suggest to you that if people concluded
4367 that the President were improperly exercising discretion by
4368 the executive branch, they would not elect the President.
4369 They have a mechanism to respond to that in the electoral
4370 process.

4371 Mr. Gowdy. Can I ask my friend one question, my friend
4372 correctly notes the use of prosecutorial discretion. I did
4373 it for 16 years. I don't want to do anything to force a
4374 prosecutor to take a case to trial.

4375 However, what does the gentleman from Rhode Island do
4376 with an administration that says, wholesale, this entire
4377 category called mandatory minimums, we are no longer going
4378 to enforce.

4379 Does the gentleman not concede that that is not case-by-
4380 case. That is wholesale.

4381 Mr. Cicilline. Reclaiming my time, I will answer that,

4382 but I believe Mr. Garcia wants --

4383 Mr. Garcia. The other side has used this. It is in the
4384 Constitution. You do have a remedy. It is called
4385 impeachment.

4386 If the President is acting outside of his constitutional
4387 boundaries, bring him up on charges. Go through the
4388 process. It didn't turn out well last time, but the reality
4389 is you have the power. It is stated in the Constitution.
4390 If the President is acting outside his constitutional
4391 purview, it is called impeachment.

4392 Mr. Gowdy. Well, what does the gentleman do with the
4393 Coleman case, where the Supreme Court clearly said, if this
4394 group were speaking on behalf of the whole House, our
4395 analysis would be different. The court was inviting us to
4396 stand up for this notion of institutional standing. That is
4397 the Supreme Court --

4398 Mr. Garcia. File the articles, and we begin the
4399 process.

4400 Mr. Gowdy. No, no, no. That is a separate remedy. You
4401 don't start with execution. You go through probation. You
4402 go through a short term of incarceration.

4403 Mr. Garcia. Not in the Constitution, when you are
4404 balancing powers. And this is exactly where you are
4405 stepping into.

4406 The President has broad discretion of exercising of his
4407 jurisdiction. And if he is acting outside the
4408 constitutional norm, as the other side loves to allege,
4409 well, then bring him up on charges.

4410 Mr. Gowdy. Well, there are other remedies. There are
4411 appropriations --

4412 Mr. Garcia. There shouldn't be a remedy to sue the
4413 President. If there --

4414 Mr. Gowdy. But there already is. If you look at
4415 Coleman --

4416 Mr. Garcia. Yes, you bring him before the court, and
4417 the court decides. And if the President does not act --

4418 Mr. Gowdy. This is just codifying Coleman. Coleman
4419 said, if the House as an institution believes under a theory
4420 of vote nullification that they have been defanged as an
4421 equal branch of government, our analysis would be different.

4422 All we are doing here is codifying the holding in
4423 Coleman that, yes, as an institution, we want to stand up

4424 for the rights of an equal branch of government. That is
4425 all this bill is doing.

4426 Chairman Goodlatte. The time of the gentleman has
4427 expired.

4428 For what purpose does the gentleman from California seek
4429 recognition?

4430 Mr. Issa. I move to strike the last word.

4431 Chairman Goodlatte. The gentleman is recognized for 5
4432 minutes.

4433 Mr. Issa. Thank you, Mr. Chairman.

4434 Sometimes it helps if you make a problem larger, and
4435 there is nothing larger than the question of the
4436 Constitution. So maybe, in this case, we can make the
4437 problem smaller.

4438 I have known the gentlelady from Texas for all of my
4439 career here in the Congress, and I have known the other
4440 members, for the most part, as they have each come.

4441 And I know that they all, really in good faith, want to
4442 figure out what the right answer here is. I don't think
4443 people on either side are arguing the Constitution purely
4444 for political purposes.

4445 But I think maybe let's reduce the dialogue to something
4446 that the American people understand. Every day, many times
4447 every day, people or groups, lawyers on behalf of what
4448 become classes, sue the Federal Government.

4449 They sue for compliance to the Clean Air Act. They sue
4450 for compliance to the Endangered Species Act. They sue
4451 under the Americans with Disabilities Act against an
4452 individual or against the Government for not enforcing some
4453 aspect of it.

4454 These go on every day. These are civil suits.

4455 The fact is that if the Federal Government, for example,
4456 in the case of the Affordable Care Act, not to use it for
4457 any reason other than it currently has two cases before the
4458 U.S. Supreme Court, in which parties claim that their
4459 constitutional rights have been violated. They have been
4460 granted standing. They have gone through the case, and they
4461 are now having their cases heard by the United States
4462 Supreme Court.

4463 What I see in this bill, and I am honored to be a
4464 cosponsor along with Chairman Goodlatte and Chairman Gowdy,
4465 is that we give ourselves the standing to ask Article III,

4466 ask the other branch exactly what every American would like
4467 to ask in many of these cases.

4468 If the EPA -- let's drop it down from the President --
4469 if the EPA, if OSHA, and I want to look at my Democratic
4470 friends, if some institution that you dearly want to have
4471 enforce the law, under a Republican or this President, is
4472 not doing it, it is part of the executive branch. It is
4473 failing to, as the bill says, Article II, section 3, the
4474 United States Constitution declares the President shall take
4475 care that laws are faithfully executed.

4476 If all of these various institutions, many of which do
4477 the bidding of, if you will, parties, one side or the other,
4478 with some greater zeal -- I think of the NLRB enforcing
4479 labor laws and enforcing the very questions of union
4480 membership.

4481 Mr. Conyers, I know you have had a keen interest over
4482 the years in that, or the Civil Rights Act.

4483 Any and all of these, if an individual, one man, one
4484 woman, says I have standing because I have been injured by
4485 the Government, which is ultimately the executive branch,
4486 and they ask for standing, they fight like hell to get

4487 standing. And often they spend a lot of their own money.

4488 What this legislation does for this body is it says, if
4489 the majority of the members of the House or the majority of
4490 the members of the Senate believe strongly on behalf of, if
4491 you will, a class of people, maybe not a single plaintiff
4492 that you can identify and say Mrs. Carstairs has been
4493 somehow wronged, but a class of people feel that a law is
4494 not being faithfully executed, they have the opportunity
4495 that every American should have and does have, if they are
4496 granted standing, to go to the court.

4497 What is important about this is, if the administration
4498 under any President, under any Cabinet officer, under any
4499 sub-Cabinet officer, doesn't do its job, instead of having
4500 to go and try to find an attorney and raise the money to
4501 fight your Government for not doing its job, or persecuting
4502 you on the other side -- remember, not faithfully executing
4503 the laws can be the other side of the coin. It can be
4504 overzealously doing something.

4505 We say, you know what, it ought to be at your own
4506 Government's expense to go to the third branch, the
4507 arbitrator the Constitution intended, and ask them to

4508 arbitrate the difference of whether or not the EPA, OSHA,
4509 Fish and Wildlife, is properly doing it.

4510 This is our Government. This is our President's
4511 administration. This is the executive branch.

4512 So if we stop personalizing it to one piece of
4513 legislation, stop personalizing it to the current occupant
4514 of the White House, I think what we will see is this is an
4515 empowerment act for the two houses of Congress not to
4516 nullify the President, but simply to ask the third branch
4517 what happens every day in civil suits, is people come before
4518 the court and say, "The EPA is not doing their job. They
4519 are not protecting clean air or clean water."

4520 Please look at it that way, and I think we can bring
4521 this to a conclusion.

4522 I yield back.

4523 Chairman Goodlatte. The time of the gentleman has
4524 expired.

4525 What purpose does the gentleman from Puerto Rico seek
4526 recognition?

4527 Mr. Pierluisi. Mr. Chairman, I move to strike the last
4528 word.

4529 Chairman Goodlatte. The gentleman is recognized for 5
4530 minutes.

4531 Mr. Pierluisi. I will be brief.

4532 As I see it, Congress' business is to legislate, not to
4533 sue, not to initiate litigation.

4534 Individual plaintiffs can assert lawsuits against the
4535 President and the executive branch, if they believe that the
4536 President is not properly discharging his responsibilities
4537 according to the Constitution.

4538 But it is not Congress' business to be promoting that or
4539 acting on behalf of the citizenry. That is the point that
4540 we are raising.

4541 Congress can always be more specific in its legislation,
4542 if it believes that the President is exceeding his
4543 discretion.

4544 The President can issue regulations. The President can,
4545 of course, exercise his discretion in interpreting the laws
4546 that we approve.

4547 But to go to the extreme of initiating a lawsuit to
4548 challenge the President's power, it just flies in the face
4549 of the way that this country was designed. That is not our

4550 business.

4551 I yield to the gentlelady from Texas.

4552 Ms. Jackson Lee. I thank the gentleman very much for
4553 yielding, and I wanted to respond to the two gentlemen, Mr.
4554 Gowdy and Mr. Labrador, first on the authority and first on
4555 the interpretation that Mr. Labrador gave in terms of the
4556 President wanting to either overturn or abolish all of our
4557 tax laws.

4558 I think the Founding Fathers were clear in their
4559 generalness. They vested into the President of the United
4560 States executive power. Article II, section 1. "The
4561 executive power shall be vested in a President of the United
4562 States of America."

4563 Mr. Labrador suggests as an example of the overturning
4564 of a law, the President has never attempted to overturn a
4565 law. He has attempted to implement and/or explain a law.
4566 That is within the President's executive power and
4567 discretion.

4568 And so I think we have answered the basis upon which the
4569 President has acted in a number of instances. It is
4570 implementing. Any temporary relief that has been given

4571 through the Affordable Care Act is an interpretation of that
4572 law as to what is allowable under that law.

4573 And so it is temporary. And I would make the argument
4574 that the President has the authority to implement. He has
4575 the authority under the executive power.

4576 And my amendment, in particular, is asking for an
4577 exception in this bill to the President responding to
4578 Federal law interpretation by the courts, or a
4579 constitutional question interpreted by the courts, that this
4580 ENFORCE Act, 4138, does not prevent the President from
4581 following through on instructions from the judiciary in the
4582 interpretation of the laws.

4583 And I would ask my colleagues to support the Jackson Lee
4584 amendment. I yield back to the gentleman.

4585 Mr. Pierluisi. I yield back.

4586 Chairman Goodlatte. The question occurs on the
4587 amendment offered by the gentlewoman from Texas.

4588 All those in favor, respond by saying aye.

4589 Those opposed, no.

4590 In the opinion of the chair, the noes have it.

4591 The amendment is not agreed to.

4592 Ms. Jackson Lee. Roll call.

4593 Chairman Goodlatte. A recorded vote is requested, and

4594 the clerk will call the roll.

4595 Ms. Deterding. Mr. Goodlatte?

4596 Chairman Goodlatte. No.

4597 Ms. Deterding. Mr. Goodlatte votes no.

4598 Mr. Sensenbrenner?

4599 [No response.]

4600 Ms. Deterding. Mr. Coble?

4601 Mr. Coble. No.

4602 Ms. Deterding. Mr. Coble votes no.

4603 Mr. Smith of Texas?

4604 [No response.]

4605 Ms. Deterding. Mr. Chabot?

4606 Mr. Chabot. No.

4607 Ms. Deterding. Mr. Chabot votes no.

4608 Mr. Bachus?

4609 Mr. Bachus. No.

4610 Ms. Deterding. Mr. Bachus votes no.

4611 Mr. Issa?

4612 Mr. Issa. No.

4613 Ms. Deterding. Mr. Issa votes no.
4614 Mr. Forbes?
4615 Mr. Forbes. No.
4616 Ms. Deterding. Mr. Forbes votes no.
4617 Mr. King?
4618 [No response.]
4619 Ms. Deterding. Mr. Franks?
4620 Mr. Franks. No.
4621 Ms. Deterding. Mr. Franks votes no.
4622 Mr. Gohmert?
4623 Mr. Gohmert. No.
4624 Ms. Deterding. Mr. Gohmert votes no.
4625 Mr. Jordan?
4626 Mr. Jordan. No.
4627 Ms. Deterding. Mr. Jordan votes no.
4628 Mr. Poe?
4629 [No response.]
4630 Ms. Deterding. Mr. Chaffetz?
4631 [No response.]
4632 Ms. Deterding. Mr. Marino?
4633 [No response.]

4634 Ms. Deterding. Mr. Gowdy?

4635 Mr. Gowdy. No.

4636 Ms. Deterding. Mr. Gowdy votes no.

4637 Mr. Labrador?

4638 Mr. Labrador. No.

4639 Ms. Deterding. Mr. Labrador votes no.

4640 Mr. Farenthold?

4641 Mr. Farenthold. No.

4642 Ms. Deterding. Mr. Farenthold votes no.

4643 Mr. Holding?

4644 Mr. Holding. No.

4645 Ms. Deterding. Mr. Holding votes no.

4646 Mr. Collins?

4647 [No response.]

4648 Ms. Deterding. Mr. DeSantis?

4649 Mr. DeSantis. No.

4650 Ms. Deterding. Mr. DeSantis votes no.

4651 Mr. Smith of Missouri?

4652 Mr. Smith of Missouri. No.

4653 Ms. Deterding. Mr. Smith of Missouri votes no.

4654 Mr. Conyers?

4655 Mr. Conyers. Aye.

4656 Ms. Deterding. Mr. Conyers votes aye.

4657 Mr. Nadler?

4658 Mr. Nadler. Aye.

4659 Ms. Deterding. Mr. Nadler votes aye.

4660 Mr. Scott?

4661 Mr. Scott. Aye.

4662 Ms. Deterding. Mr. Scott votes aye.

4663 Ms. Deterding. Ms. Lofgren?

4664 [No response.]

4665 Ms. Deterding. Ms. Jackson Lee?

4666 Ms. Jackson Lee. Aye.

4667 Ms. Deterding. Ms. Jackson Lee votes aye.

4668 Mr. Cohen?

4669 Mr. Cohen. Aye.

4670 Ms. Deterding. Mr. Cohen votes aye.

4671 Mr. Johnson?

4672 Mr. Johnson. Aye.

4673 Ms. Deterding. Mr. Johnson votes aye.

4674 Mr. Pierluisi?

4675 Mr. Pierluisi. Aye.

4676 Ms. Deterding. Mr. Pierluisi votes aye.

4677 Ms. Chu?

4678 Ms. Chu. Aye.

4679 Ms. Deterding. Ms. Chu votes aye.

4680 Mr. Deutch?

4681 [No response.]

4682 Ms. Deterding. Mr. Gutierrez?

4683 Mr. Gutierrez. Yes.

4684 Ms. Deterding. Mr. Gutierrez votes aye.

4685 Ms. Bass?

4686 [No response.]

4687 Ms. Deterding. Mr. Richmond?

4688 [No response.]

4689 Ms. Deterding. Ms. DelBene?

4690 Ms. DelBene. Aye.

4691 Ms. Deterding. Ms. DelBene votes aye.

4692 Mr. Garcia?

4693 Mr. Garcia. Aye.

4694 Ms. Deterding. Mr. Garcia votes aye.

4695 Mr. Jeffries?

4696 Mr. Jeffries. Aye.

4697 Ms. Deterding. Mr. Jeffries votes aye.

4698 Mr. Cicilline?

4699 Mr. Cicilline. Aye.

4700 Ms. Deterding. Mr. Cicilline votes aye.

4701 Chairman Goodlatte. The gentleman from Iowa?

4702 Mr. King. No.

4703 Ms. Deterding. Mr. King votes no.

4704 Chairman Goodlatte. The gentleman from Pennsylvania?

4705 Mr. Marino. No.

4706 Ms. Deterding. Mr. Marino votes no.

4707 Chairman Goodlatte. The gentleman from Georgia?

4708 Mr. Collins. No.

4709 Ms. Deterding. Mr. Collins votes no.

4710 Chairman Goodlatte. Has every member voted who wishes

4711 to vote?

4712 The clerk will report.

4713 Ms. Deterding. Mr. Chairman, 13 members voted aye; 18

4714 members voted no.

4715 Chairman Goodlatte. And the amendment is not agreed to.

4716 Are there further amendments?

4717 For what purpose does the gentleman from Tennessee seek

4718 recognition?

4719 Mr. Cohen. I have an amendment at the desk.

4720 Chairman Goodlatte. The clerk will report --

4721 Mr. Cohen. Thank you, Mr. Chairman. I would like to go
4722 further and not have it read, but as you remember in my
4723 statement, I said this was a travesty of a mockery of a sham
4724 of a mockery of a travesty --

4725 Chairman Goodlatte. The clerk will --

4726 Mr. Cohen. I don't want to continue it. I want to
4727 withdraw the amendment and move on.

4728 Chairman Goodlatte. Without objection, the amendment of
4729 the gentleman from Tennessee is withdrawn.

4730 And with much appreciation, I might add, too.

4731 For what purpose does the gentleman from Georgia seek
4732 recognition?

4733 Mr. Johnson. Mr. Chairman, I have an amendment at the
4734 desk.

4735 Chairman Goodlatte. The clerk will report the
4736 amendment.

4737 Ms. Deterding. Amendment to H.R. 4138, offered by Mr.
4738 Johnson of Georgia. Page 4, after a line 7, insert the

4739 following: "Limitation. Nothing in this act limits or
4740 otherwise affects any action taken by the President, the
4741 head of a department or agency of the United States, or any"

4742 --

4743 Chairman Goodlatte. Without objection, the amendment
4744 shall be considered as read.

4745 [The amendment of Mr. Johnson follows:]

4746

4747 Chairman Goodlatte. And the gentleman is recognized for
4748 5 minutes on his amendment.

4749 Mr. Johnson. Thank you, Mr. Chairman.

4750 The ENFORCE Act purports to protect the American people
4751 by granting Congress the authority to sue the President of
4752 the United States when members believe the President is not
4753 executing the laws of our country.

4754 Now, are there any specific instances cited by the
4755 Republicans in support of this legislation? So far, I have
4756 heard none.

4757 The ENFORCE Act isn't about protecting the American
4758 people from a President or leader who isn't faithfully
4759 executing the laws. This act is simply a message bill,
4760 which plays into the false Republican narrative that the
4761 President is not the faithfully executing the laws passed by
4762 this Congress.

4763 This false narrative conveniently ignores the fact that
4764 during the first year of the 113th session of Congress under
4765 Republican reign, only 58 bills were passed and signed by
4766 the President into law.

4767 This is what has been referred to as a do-nothing

4768 Congress, that first year. And this second year is shaping
4769 up to be an even less productive year, insofar as
4770 legislation is concerned, signed by the President, than last
4771 year.

4772 So this Congress, I would project, will easily go down
4773 as the most do-nothingest Congress in the annals of American
4774 history.

4775 Mr. Chabot. Will the gentleman yield?

4776 Mr. Johnson. Yes, sir, I would.

4777 Mr. Chabot. I thank the gentleman for yielding.

4778 I am just curious, would the gentleman consider that
4779 perhaps Senator Reid might have had something to do with the
4780 fact that a lot of the laws that we passed in the House got
4781 over there and went absolutely nothing. He wouldn't even
4782 bring them up for debate or a vote or anything?

4783 Mr. Johnson. No, I would say, reclaiming my time, that
4784 the Senate has produced a lot of good, meaningful
4785 legislation over the last year that remains on idle because
4786 this body will not take those measures up, things like
4787 immigration reform, and the list goes on and on.

4788 But getting back to this bill, this bill at its very

4789 core -- and even increasing the minimum wage would be
4790 something that this body can be looking at. Instead, we are
4791 doing messaging bills. We continue to do these messaging
4792 bills.

4793 At its very core, this bill politicizes the rights
4794 enshrined in the Constitution and accorded to the executive
4795 branch under the separations of powers doctrine and upsets
4796 200 years of jurisprudence started by the seminal case
4797 Marbury v. Madison that interpreted the Constitution to
4798 establish three coequal branches of government.

4799 Now this bill would turn the presidency into something
4800 akin to like a county manager form of government, where you
4801 have a local legislative body that then hires an executive
4802 to carry out the legislative purposes. And they can hire
4803 and fire the executive whenever they decide to do so.

4804 Our system on the Federal level is not set up like that.
4805 It is a coequal branch of government. The President has the
4806 power and authority to execute the laws of this Nation, and
4807 under certain conditions, the legislative branch already has
4808 the power to declare or to contest a presidential action or
4809 perhaps inaction.

4810 But this act is probably unconstitutional on its face.
4811 My amendment today would protect the President of the United
4812 States and heads of all departments and agencies of the
4813 United States Government or any other officer or employee of
4814 the United States from having their constitutional
4815 responsibilities compromised by this act.

4816 The President is voted on by the American people. He is
4817 not selected by any particular House of Congress. And
4818 Congress needs to learn how to work with the President, as
4819 the President must do with Congress. And unfortunately,
4820 because of who the President is at this time, we have had
4821 nothing but gridlock ever since Senator McConnell and other
4822 Senators and congressmen declared on the first night of
4823 President Obama's first inauguration that their vow was to
4824 make sure that he was a one-term President.

4825 Chairman Goodlatte. The time of the gentleman has
4826 expired.

4827 Mr. Johnson. With that, I will yield back.

4828 Chairman Goodlatte. The chair thanks the gentleman and
4829 recognizes himself in opposition to the amendment.

4830 So let us take a look at the language of the amendment

4831 because it is pretty amazing. It says nothing in this act
4832 limits or otherwise affects any, any action taken by the
4833 President that concerns a right protected by the
4834 Constitution of the United States.

4835 So what this amendment says is that with regard to any
4836 right protected by the Constitution of the United States,
4837 there is nothing that anybody can do about it if the
4838 President takes that action. That is way out of bounds.

4839 I oppose this amendment. It would allow the President
4840 to avoid accountability for his failure to enforce the
4841 Constitution itself. Indeed, the amendment would deny the
4842 courts the ability to defend the very constitutional powers
4843 of Congress and the people's duly elected representatives.

4844 If any Member wants to give the President a blank check
4845 to enforce certain parts of the Constitution, but not
4846 others, then by all means vote for this amendment. But if
4847 any Member wants to see the current President or any
4848 President accountable for his failure to enforce the
4849 Constitution itself, then vote against this amendment.

4850 I urge my colleagues to join me in doing so.

4851 The question occurs on the amendment.

4852 All those in favor of the amendment offered by the
4853 gentleman from Georgia, respond by saying aye.

4854 Those opposed, no.

4855 In the opinion of the chair, the noes have it, and the
4856 amendment is not agreed to.

4857 Mr. Johnson. I ask for a recorded vote.

4858 Chairman Goodlatte. A recorded vote is requested. The
4859 clerk will call the roll.

4860 Ms. Deterding. Mr. Goodlatte?

4861 Chairman Goodlatte. No.

4862 Ms. Deterding. Mr. Goodlatte votes no.

4863 Mr. Sensenbrenner?

4864 [No response.]

4865 Ms. Deterding. Mr. Coble?

4866 [No response.]

4867 Ms. Deterding. Mr. Smith of Texas?

4868 [No response.]

4869 Ms. Deterding. Mr. Chabot?

4870 Mr. Chabot. No.

4871 Ms. Deterding. Mr. Chabot votes no.

4872 Mr. Bachus?

4873 Mr. Bachus. No.

4874 Ms. Deterding. Mr. Bachus votes no.

4875 Mr. Issa?

4876 [No response.]

4877 Ms. Deterding. Mr. Forbes?

4878 Mr. Forbes. No.

4879 Ms. Deterding. Mr. Forbes votes no.

4880 Mr. King?

4881 Mr. King. No.

4882 Ms. Deterding. Mr. King votes no.

4883 Mr. Franks?

4884 [No response.]

4885 Ms. Deterding. Mr. Gohmert?

4886 Mr. Gohmert. No.

4887 Ms. Deterding. Mr. Gohmert votes no.

4888 Mr. Jordan?

4889 Mr. Jordan. No.

4890 Ms. Deterding. Mr. Jordan votes no.

4891 Mr. Poe?

4892 [No response.]

4893 Ms. Deterding. Mr. Chaffetz?

4894 [No response.]

4895 Ms. Deterding. Mr. Marino?

4896 Mr. Marino. No.

4897 Ms. Deterding. Mr. Marino votes no.

4898 Mr. Gowdy?

4899 Mr. Gowdy. No.

4900 Ms. Deterding. Mr. Gowdy votes no.

4901 Mr. Labrador?

4902 Mr. Labrador. No.

4903 Ms. Deterding. Mr. Labrador votes no.

4904 Mr. Farenthold?

4905 Mr. Farenthold. No.

4906 Ms. Deterding. Mr. Farenthold votes no.

4907 Mr. Holding?

4908 [No response.]

4909 Ms. Deterding. Mr. Collins?

4910 Mr. Collins. No.

4911 Ms. Deterding. Mr. Collins votes no.

4912 Mr. DeSantis?

4913 Mr. DeSantis. No.

4914 Ms. Deterding. Mr. DeSantis votes no.

4915 Mr. Smith of Missouri?

4916 Mr. Smith of Missouri. No.

4917 Ms. Deterding. Mr. Smith of Missouri votes no.

4918 Mr. Conyers?

4919 [No response.]

4920 Ms. Deterding. Mr. Nadler?

4921 Mr. Nadler. Aye.

4922 Ms. Deterding. Mr. Nadler votes aye.

4923 Mr. Scott?

4924 Mr. Scott. Aye.

4925 Ms. Deterding. Mr. Scott votes aye.

4926 Ms. Lofgren?

4927 [No response.]

4928 Ms. Deterding. Ms. Jackson Lee?

4929 [No response.]

4930 Ms. Deterding. Mr. Cohen?

4931 Mr. Cohen. Aye.

4932 Ms. Deterding. Mr. Cohen votes aye.

4933 Mr. Johnson?

4934 Mr. Johnson. Aye.

4935 Ms. Deterding. Mr. Johnson votes aye.

4936 Mr. Pierluisi?

4937 Mr. Pierluisi. Aye.

4938 Ms. Deterding. Mr. Pierluisi votes aye.

4939 Ms. Chu?

4940 Ms. Chu. Aye.

4941 Ms. Deterding. Ms. Chu votes aye.

4942 Mr. Deutch?

4943 [No response.]

4944 Ms. Deterding. Mr. Gutierrez?

4945 Mr. Gutierrez. Aye.

4946 Ms. Deterding. Mr. Gutierrez votes aye.

4947 Ms. Bass?

4948 [No response.]

4949 Ms. Deterding. Mr. Richmond?

4950 [No response.]

4951 Ms. Deterding. Ms. DelBene?

4952 Ms. DelBene. Aye.

4953 Ms. Deterding. Ms. DelBene votes aye.

4954 Mr. Garcia?

4955 [No response.]

4956 Ms. Deterding. Mr. Jeffries?

4957 [No response.]

4958 Ms. Deterding. Mr. Cicilline?

4959 Mr. Cicilline. Aye.

4960 Ms. Deterding. Mr. Cicilline votes aye.

4961 Chairman Goodlatte. The gentleman from North Carolina?

4962 Mr. Coble. No.

4963 Ms. Deterding. Mr. Coble votes no.

4964 Chairman Goodlatte. The gentleman from Michigan?

4965 Mr. Conyers. Aye.

4966 Chairman Goodlatte. The gentlewoman from Texas?

4967 Ms. Jackson Lee. Aye.

4968 Ms. Deterding. Ms. Jackson Lee votes aye.

4969 Chairman Goodlatte. Has every Member voted who wishes

4970 to vote?

4971 [No response.]

4972 Chairman Goodlatte. The clerk will report.

4973 Ms. Deterding. Mr. Chairman, 11 Members voted aye; 15

4974 Members voted nay.

4975 Chairman Goodlatte. And the amendment is not agreed to.

4976 Are there further amendments?

4977 Mr. Cicilline. Mr. Chairman?

4978 Chairman Goodlatte. For what purpose does the gentleman
4979 from Rhode Island seek recognition?

4980 Mr. Cicilline. Mr. Chairman, I have an amendment at the
4981 desk. Or actually, I have two amendments at the desk.

4982 Mr. Chabot. Mr. Chairman?

4983 Chairman Goodlatte. Would the gentleman designate which
4984 amendment he wishes considered?

4985 Mr. Cicilline. The first one on the costs.

4986 Chairman Goodlatte. All right.

4987 Mr. Chabot. Mr. Chairman? Mr. Chairman, I would
4988 reserve a point of order.

4989 Chairman Goodlatte. A point of order is reserved. The
4990 clerk will report the amendment.

4991 Ms. Deterding. Amendment to H.R. 4138, offered by Mr.
4992 Cicilline of Rhode Island. Page 4 after line 7, insert the
4993 following: Report. Not later than the end of the --

4994 Chairman Goodlatte. Without objection, the amendment
4995 will be considered as read.

4996 [The amendment of Mr. Cicilline follows:]

4997

4998 Chairman Goodlatte. And the gentleman is recognized on
4999 his amendment.

5000 Mr. Cicilline. Thank you, Mr. Chairman.

5001 This amendment simply requires quarterly reporting of
5002 the costs associated with litigation initiated under this
5003 act. Specifically, it would require the general counsels of
5004 the House and Senate to submit to the Committees on the
5005 Judiciary of the House and Senate quarterly reports on the
5006 cost of any civil action brought pursuant to this act,
5007 including attorney's fees.

5008 Many of my colleagues have expressed significant concern
5009 about ensuring tax dollars are used appropriately and
5010 carefully, as we should. One would expect the ENFORCE Act
5011 to have clear oversight and transparency provisions in
5012 place. However, it does not. So I urge my colleagues to
5013 support my amendment, which would provide a transparent
5014 quarterly accounting of the costs of pursuing legal action
5015 under the ENFORCE Act.

5016 As many of my colleagues know and we frequently hear
5017 here on this committee and in the Congress, litigation can
5018 be extremely expensive. So let us ensure that Members of

5019 Congress and the public are aware of exactly how much
5020 taxpayer resources are being spent on pursuing legal action
5021 under this act.

5022 And while a disbursement reporting process at the Office
5023 of General Counsel exists, recent experience underscores its
5024 failure to provide timely, transparent accounting. For
5025 example, in challenging the unconstitutional Defense of
5026 Marriage Act, the House Bipartisan Legal Advisory Group, at
5027 the direction of the House majority and without minority
5028 consultation, contracted for up to \$500,000 in legal
5029 services, which, through a series of contract extensions,
5030 ultimately grew to up to \$3 million.

5031 Today, more than 8 months after the United States
5032 Supreme Court struck down DOMA as unconstitutional, we do
5033 not have an adequate accounting of how much the House
5034 actually spent on defending this discriminatory law. And as
5035 minority Members of the House administration reported during
5036 this legal challenge in 2002, and I quote, "No one seems to
5037 know where the funds are coming from. There has been no
5038 appropriation for this increased expense. There has been no
5039 mention of the funding source in the contract extensions.

5040 There is no record of payment being made in the statement of
5041 disbursements."

5042 Clearly, the existing reporting requirements are
5043 insufficient to inform Members of Congress and the general
5044 public of its litigation disbursements. And while Members
5045 may disagree on the merits of DOMA, as well as the need for
5046 this legislation, I hope we all recognize that neither side
5047 nor the public interest is served by obscuring the
5048 disclosure of litigation expenditures in this matter or any
5049 other action contemplated by this act.

5050 So I would urge my colleagues to support my amendment.
5051 It is a simple reporting requirement, a safeguard to ensure
5052 transparency in spending under this act. And with that, I
5053 yield back the balance of my time.

5054 Chairman Goodlatte. Does the gentleman from Ohio insist
5055 on his point of order?

5056 Mr. Chabot. Yes, Mr. Chairman. I do.

5057 Chairman Goodlatte. The gentleman is recognized.

5058 Mr. Chabot. Thank you, Mr. Chairman. I will be brief.

5059 The amendment deals with the general counsel, which is
5060 in the jurisdiction of the Committee on Administration. And

5061 therefore, I do insist on my point of order.

5062 Chairman Goodlatte. Does the gentleman from Rhode
5063 Island wish to be heard on the point of order?

5064 Mr. Cicilline. Yes. I would ask, Mr. Chairman, for
5065 unanimous consent to amend the amendment that I offered to
5066 replace "general counsel of the House of Representatives" to
5067 the "GAO, the General Administration Office," which I think
5068 will satisfy the gentleman's concern.

5069 Chairman Goodlatte. What precisely is the gentleman
5070 changing?

5071 Mr. Cicilline. Deleting "the general counsel of the
5072 House of Representatives and the general counsel of the
5073 Senate" and instead replace it with "General Accounting
5074 Office." I am sorry, "General Accountability Office," so
5075 that the reporting would happen. It would require a report
5076 by the GAO to the Committee on the Judiciary in the House
5077 and the Senate.

5078 Chairman Goodlatte. Is there objection to the unanimous
5079 consent request to amend the amendment, which would make it
5080 germane?

5081 [No response.]

5082 Chairman Goodlatte. Hearing none, the amendment is
5083 amended as described by the gentleman. And the point of
5084 order is withdrawn.

5085 Mr. Chabot. With that, I will withdraw the point of
5086 order.

5087 [Pause.]

5088 Chairman Goodlatte. The chair recognizes himself in
5089 opposition to the amendment.

5090 The chair appreciates the gentleman's concern about
5091 cost, but we are talking about the United States
5092 Constitution and the prerogatives of the Congress to defend
5093 that Constitution. And as a result, I must oppose the
5094 amendment.

5095 The question occurs on the amendment offered by the
5096 gentleman from Rhode Island.

5097 All those in favor, respond by saying aye.

5098 Those opposed, no.

5099 In the opinion of the chair, the noes have it.

5100 Mr. Cicilline. Mr. Chairman, I ask for a recorded vote.

5101 Chairman Goodlatte. A recorded vote is requested. The
5102 clerk will call the roll.

5103 Ms. Deterding. Mr. Goodlatte?

5104 Chairman Goodlatte. No.

5105 Ms. Deterding. Mr. Goodlatte votes no.

5106 Mr. Sensenbrenner?

5107 [No response.]

5108 Ms. Deterding. Mr. Coble?

5109 Mr. Coble. No.

5110 Ms. Deterding. Mr. Coble votes no.

5111 Mr. Smith of Texas?

5112 [No response.]

5113 Ms. Deterding. Mr. Chabot?

5114 Mr. Chabot. No.

5115 Ms. Deterding. Mr. Chabot votes no.

5116 Mr. Bachus?

5117 Mr. Bachus. No.

5118 Ms. Deterding. Mr. Bachus votes no.

5119 Mr. Issa?

5120 [No response.]

5121 Ms. Deterding. Mr. Forbes?

5122 [No response.]

5123 Ms. Deterding. Mr. King?

5124 Mr. King. No.

5125 Ms. Deterding. Mr. King votes no.

5126 Mr. Franks?

5127 [No response.]

5128 Ms. Deterding. Mr. Gohmert?

5129 Mr. Gohmert. No.

5130 Ms. Deterding. Mr. Gohmert votes no.

5131 Mr. Jordan?

5132 [No response.]

5133 Ms. Deterding. Mr. Poe?

5134 [No response.]

5135 Ms. Deterding. Mr. Chaffetz?

5136 [No response.]

5137 Ms. Deterding. Mr. Marino?

5138 Mr. Marino. No.

5139 Ms. Deterding. Mr. Marino votes no.

5140 Mr. Gowdy?

5141 Mr. Gowdy. No.

5142 Ms. Deterding. Mr. Gowdy votes no.

5143 Mr. Labrador?

5144 Mr. Labrador. No.

5145 Ms. Deterding. Mr. Labrador votes no.

5146 Mr. Farenthold?

5147 Mr. Farenthold. No.

5148 Ms. Deterding. Mr. Farenthold votes no.

5149 Mr. Holding?

5150 [No response.]

5151 Ms. Deterding. Mr. Collins?

5152 Mr. Collins. No.

5153 Ms. Deterding. Mr. Collins votes no.

5154 Mr. DeSantis?

5155 Mr. DeSantis. No.

5156 Ms. Deterding. Mr. DeSantis votes no.

5157 Mr. Smith of Missouri?

5158 Mr. Smith of Missouri. No.

5159 Ms. Deterding. Mr. Smith of Missouri votes no.

5160 Mr. Conyers?

5161 [No response.]

5162 Ms. Deterding. Mr. Nadler?

5163 Mr. Nadler. Aye.

5164 Ms. Deterding. Mr. Nadler votes aye.

5165 Mr. Scott?

5166 Mr. Scott. Aye.

5167 Ms. Deterding. Mr. Scott votes aye.

5168 Ms. Lofgren?

5169 [No response.]

5170 Ms. Deterding. Ms. Jackson Lee?

5171 Ms. Jackson Lee. Aye.

5172 Ms. Deterding. Ms. Jackson Lee votes aye.

5173 Mr. Cohen?

5174 [No response.]

5175 Ms. Deterding. Mr. Johnson?

5176 [No response.]

5177 Ms. Deterding. Mr. Pierluisi?

5178 Mr. Pierluisi. Aye.

5179 Ms. Deterding. Mr. Pierluisi votes aye.

5180 Ms. Chu?

5181 Ms. Chu. Aye.

5182 Ms. Deterding. Ms. Chu votes aye.

5183 Mr. Deutch?

5184 [No response.]

5185 Ms. Deterding. Mr. Gutierrez?

5186 Mr. Gutierrez. Aye.

5187 Ms. Deterding. Mr. Gutierrez votes aye.

5188 Ms. Bass?

5189 [No response.]

5190 Ms. Deterding. Mr. Richmond?

5191 [No response.]

5192 Ms. Deterding. Ms. DelBene?

5193 Ms. DelBene. Aye.

5194 Ms. Deterding. Ms. DelBene votes aye.

5195 Mr. Garcia?

5196 Mr. Garcia. Aye.

5197 Ms. Deterding. Mr. Garcia votes aye.

5198 Mr. Jeffries?

5199 [No response.]

5200 Ms. Deterding. Mr. Cicilline?

5201 Mr. Cicilline. Aye.

5202 Ms. Deterding. Mr. Cicilline votes aye.

5203 Mr. Forbes. Mr. Chairman?

5204 Chairman Goodlatte. The gentleman from Virginia?

5205 Mr. Forbes. No.

5206 Ms. Deterding. Mr. Forbes votes no.

5207 Chairman Goodlatte. The gentleman from Texas?

5208 Mr. Smith of Texas. No.

5209 Ms. Deterding. Mr. Smith of Texas votes no.

5210 Chairman Goodlatte. The gentleman from Ohio?

5211 Mr. Jordan. No.

5212 Ms. Deterding. Mr. Jordan votes no.

5213 Chairman Goodlatte. The gentleman from Tennessee is not
5214 recorded.

5215 Ms. Deterding. Not recorded, sir.

5216 Mr. Cohen. I would like to be officially recorded as
5217 pass.

5218 Ms. Deterding. Mr. Cohen votes aye. Mr. Cohen votes
5219 pass.

5220 [Laughter.]

5221 Chairman Goodlatte. The gentleman from Georgia?

5222 Mr. Johnson. Yes.

5223 Ms. Deterding. Mr. Johnson votes aye.

5224 Chairman Goodlatte. Are there any Members who wish to
5225 vote who have not voted? The gentleman from Michigan?

5226 Mr. Conyers. Aye.

5227 Ms. Deterding. Mr. Conyers votes aye.

5228 Chairman Goodlatte. The clerk will report.

5229 Ms. Deterding. Mr. Chairman, 11 Members voted aye; 16

5230 Members voted nay.

5231 Chairman Goodlatte. And the amendment is not agreed to.

5232 For what purpose does the gentleman from Rhode Island

5233 seek recognition?

5234 Mr. Cicilline. Mr. Chairman, I have an amendment at the

5235 desk.

5236 Chairman Goodlatte. The clerk will report the

5237 amendment.

5238 Ms. Deterding. Amendment to H.R. 4138, offered by Mr.

5239 Cicilline of Rhode Island. Page 4 after line 7 --

5240 Chairman Goodlatte. Without objection, the amendment

5241 will be considered as read.

5242 [The amendment of Mr. Cicilline follows:]

5243

5244 Chairman Goodlatte. And the gentleman is recognized for
5245 5 minutes on his amendment.

5246 Mr. Cicilline. Thank you, Mr. Chairman.

5247 This amendment simply ensures that all Members of the
5248 House and Senate have the opportunity to meet with and be
5249 briefed by attorneys representing their interests in court
5250 under the ENFORCE Act.

5251 Specifically, the amendment requires outside attorneys
5252 hired to bring civil action pursuant to this act to consult
5253 with any Member of the House or Senate who requests a
5254 consultation with that attorney regarding the litigation.

5255 As presented to us today, this bill fails to ensure
5256 Members fair access to attorneys contracted under this act
5257 who purport to represent the interests of the entire House
5258 or Senate. As Members of the House and representatives of
5259 the taxpayers who are funding this litigation under the act,
5260 we should have fair access and the opportunity to understand
5261 the arguments being presented by our counsel hired under
5262 this act.

5263 Unfortunately, this is not the first time my colleagues
5264 and I have raised this concern. During the House Bipartisan

5265 Legal Advisory Group's defense of now unconstitutional
5266 Defense of Marriage Act, Ranking Members Conyers and Nadler,
5267 as well as my fellow co-chairs of the Congressional LGBT
5268 Equality Caucus and sponsors of the Respect for Marriage Act
5269 wrote repeatedly to the Speaker requesting a briefing with
5270 Bipartisan Legal Advisory Group counsel. No consultations
5271 were provided, and I would ask unanimous consent that three
5272 different letters that were written -- one dated April 4th,
5273 one dated September 26th, and one dated March 26th -- be
5274 made part of the record.

5275 Chairman Goodlatte. Without objection.

5276 [The information follows:]

5277

5278 Mr. Cicilline. However, each of our requests for
5279 consultation fell on deaf ears, and the BLAG, which was
5280 undertaken by a divided 3 to 2 vote over the strong
5281 objections of Leader Pelosi and Whip Hoyer, continued to
5282 pursue legal action without any consultation with concerned
5283 Members of the minority.

5284 As we noted in our request, it is incumbent upon all
5285 lawyers, especially those paid for by taxpayers and
5286 responsible for representing a branch of our Government, to
5287 undertake representation in an objective manner that is
5288 factually and legally supportable.

5289 Similarly, under this act, there were not sufficient
5290 safeguards to ensure that Members of the House or Senate
5291 would be provided with an opportunity to be briefed and
5292 provide feedback to duly retained counsel under the act.
5293 And while consultations may not change the decision to
5294 initiate a civil action or the litigation strategy,
5295 attorneys hired to pursue such endeavors under the act must
5296 provide all of its clients, the Members of the House and/or
5297 the Senate, fair access to counsel.

5298 In fact, counsel is required to communicate with

5299 clients, pursuant to Rule 1.4 of the Rules of Professional
5300 Responsibility. This simply ensures that that, in fact,
5301 happens.

5302 So I urge my colleagues to support my amendment and
5303 yield back the balance of my time.

5304 Chairman Goodlatte. The chair thanks the gentleman and
5305 recognizes himself in opposition to the amendment.

5306 The amendment would require attorneys who may be hired
5307 by the House or the Senate to pursue the institutional
5308 interests of the majority of either body in court to consult
5309 with Members of the minority of the House or Senate who may
5310 have interests adverse to those the attorney represents.

5311 This would constitute a clear violation of the attorney-
5312 client privilege by requiring an attorney to consult with
5313 nonclients who do not represent the institutional interests
5314 the House is asserting in court, who could then divulge
5315 sensitive litigation strategies to the other side of the
5316 litigation. And so, I must oppose the amendment.

5317 Mr. Nadler. Mr. Chairman?

5318 Chairman Goodlatte. For what purpose does the gentleman
5319 from New York seek recognition?

5320 Mr. Nadler. Strike the last word.

5321 Chairman Goodlatte. The gentleman is recognized for 5
5322 minutes.

5323 Mr. Nadler. Mr. Chairman, I strongly support the
5324 amendment offered by my colleague from Rhode Island, the
5325 Honorable David Cicilline. The behavior of House Speaker
5326 Boehner and the outside lawyers that he hired to represent
5327 the House in its ill-advised and ultimately unsuccessful
5328 defense of DOMA before the Supreme Court made clear that
5329 this amendment is sorely needed.

5330 Over the course of that litigation, I, joined by several
5331 of my colleagues, including Representative Cicilline and the
5332 ranking member of this committee, Mr. Conyers, repeatedly
5333 asked the Speaker to arrange for the lawyers purporting to
5334 represent the House in the DOMA case to brief interested
5335 Members. As we noted then, many Members did not agree with
5336 the Speaker's decision to defend this law and firmly
5337 believed that before charging into court at great taxpayers'
5338 expense, Members should hear from the House's hired lawyers
5339 as to why they believe the law was constitutional and what
5340 arguments they might make in its defense.

5341 We never even received a response from the Speaker, much
5342 less the basic briefing that we requested. This was
5343 particularly troubling, given the allegations in some of
5344 these cases that the House's hired lawyers were distorting
5345 research findings to suit their arguments. As we pointed
5346 out to Speaker Boehner in the letter sent September 26,
5347 2011, "The United States House of Representative should not
5348 be making harmful and unreasonable arguments that demean its
5349 credibility and that of the American people. It has been 15
5350 years since the Congress enacted DOMA, and the material and
5351 arguments that BLAG is making on" -- that is the Bipartisan
5352 Legislative -- Legal Advisory Group, BLAG -- "is making on
5353 behalf of the House do not withstand the tests of time or
5354 scrutiny."

5355 As we noted in that letter, insofar as BLAG purports to
5356 speak for the entire institution, all Members are clients
5357 and are entitled to a briefing. This amendment would ensure
5358 that this unacceptable refusal by the Speaker of the House
5359 and its hired lawyers even to meet with interested Members
5360 is not repeated.

5361 Any lawyer hired at taxpayer expense to represent the

5362 House must be accountable to its Members and the American
5363 public, not just to the Speaker of the House or the
5364 Bipartisan Legal Advisory Group. This amendment seeks to
5365 ensure that going forward this is the case by requiring
5366 lawyers who represent to meet with and brief interested
5367 Members.

5368 This is common courtesy and also something that most
5369 rules of ethics and conduct already demand of licensed
5370 attorneys in their interactions with clients. To the extent
5371 that this body makes the unfortunate decision to engage in
5372 costly and ill-advised litigation in the future, we should
5373 at least ensure that any lawyers hired to represent our and
5374 the American people's interests truly do so.

5375 Now I note the argument that the attorneys should not
5376 meet with or consult with Members of the House who may be in
5377 the minority and may have interests adverse to the interests
5378 of -- for which the attorneys are hired. But I would point
5379 out that two things.

5380 One, that the lawyers are hired to represent the entire
5381 house, not the majority or the minority. They represent the
5382 entire House, and all of us, as Members of the House, are

5383 clients of theirs. And they have a duty to all of us, and
5384 that duty must be at least to consult, to talk to us.

5385 And second, to the extent that they don't want to reveal
5386 to various Members litigation strategies, this amendment
5387 does not require they do so. It simply requires that they
5388 consult with Members of the House, and that should be the
5389 minimum requirement if they are going to purport to
5390 represent the House and not just one faction or subset of
5391 the House.

5392 I think it is a very good amendment, and I urge its
5393 adoption.

5394 Chairman Goodlatte. The question occurs on the
5395 amendment offered by the gentleman from Rhode Island.

5396 All those in favor, respond by saying aye.

5397 Those opposed, no.

5398 In the opinion of the chair, the noes have it, and the
5399 amendment is not agreed to.

5400 Mr. Cicilline. Mr. Chairman, I ask for a recorded vote.

5401 Chairman Goodlatte. A recorded vote is requested, and
5402 the clerk will call the roll.

5403 Ms. Deterding. Mr. Goodlatte?

5404 Chairman Goodlatte. No.

5405 Ms. Deterding. Mr. Goodlatte votes no.

5406 Mr. Sensenbrenner?

5407 [No response.]

5408 Ms. Deterding. Mr. Coble?

5409 [No response.]

5410 Ms. Deterding. Mr. Smith of Texas?

5411 Mr. Smith of Texas. No.

5412 Ms. Deterding. Mr. Smith of Texas votes no.

5413 Mr. Chabot?

5414 Mr. Chabot. No.

5415 Ms. Deterding. Mr. Chabot votes no.

5416 Mr. Bachus?

5417 Mr. Bachus. No.

5418 Ms. Deterding. Mr. Bachus votes no.

5419 Mr. Issa?

5420 [No response.]

5421 Ms. Deterding. Mr. Forbes?

5422 [No response.]

5423 Ms. Deterding. Mr. King?

5424 [No response.]

5425 Ms. Deterding. Mr. Franks?
5426 [No response.]
5427 Ms. Deterding. Mr. Gohmert?
5428 [No response.]
5429 Ms. Deterding. Mr. Jordan?
5430 Mr. Jordan. No.
5431 Ms. Deterding. Mr. Jordan votes no.
5432 Mr. Poe?
5433 [No response.]
5434 Ms. Deterding. Mr. Chaffetz?
5435 [No response.]
5436 Ms. Deterding. Mr. Marino?
5437 Mr. Marino. No.
5438 Ms. Deterding. Mr. Marino votes no.
5439 Mr. Gowdy?
5440 Mr. Gowdy. No.
5441 Ms. Deterding. Mr. Gowdy votes no.
5442 Mr. Labrador?
5443 Mr. Labrador. No.
5444 Ms. Deterding. Mr. Labrador votes no.
5445 Mr. Farenthold?

5446 Mr. Farenthold. No.

5447 Ms. Deterding. Mr. Farenthold votes no.

5448 Mr. Holding?

5449 Mr. Holding. No.

5450 Ms. Deterding. Mr. Holding votes no.

5451 Mr. Collins?

5452 Mr. Collins. No.

5453 Ms. Deterding. Mr. Collins votes no.

5454 Mr. DeSantis?

5455 Mr. DeSantis. No.

5456 Ms. Deterding. Mr. DeSantis votes no.

5457 Mr. Smith of Missouri?

5458 Mr. Smith of Missouri. No.

5459 Ms. Deterding. Mr. Smith of Missouri votes no.

5460 Mr. Conyers?

5461 [No response.]

5462 Ms. Deterding. Mr. Nadler?

5463 Mr. Nadler. Aye.

5464 Ms. Deterding. Mr. Nadler votes aye.

5465 Mr. Scott?

5466 Mr. Scott. Aye.

5467 Ms. Deterding. Mr. Scott votes aye.

5468 Ms. Lofgren?

5469 Ms. Lofgren. Aye.

5470 Ms. Deterding. Ms. Lofgren votes aye.

5471 Ms. Jackson Lee?

5472 Ms. Jackson Lee. Aye.

5473 Ms. Deterding. Ms. Jackson Lee votes aye.

5474 Mr. Cohen?

5475 Mr. Cohen. Aye.

5476 Ms. Deterding. Mr. Cohen votes aye.

5477 Mr. Johnson?

5478 Mr. Johnson. Aye.

5479 Ms. Deterding. Mr. Johnson votes aye.

5480 Mr. Pierluisi?

5481 Mr. Pierluisi. Aye.

5482 Ms. Deterding. Mr. Pierluisi votes aye.

5483 Ms. Chu?

5484 Ms. Chu. Aye.

5485 Ms. Deterding. Ms. Chu votes aye.

5486 Mr. Deutch?

5487 [No response.]

5488 Ms. Deterding. Mr. Gutierrez?

5489 Mr. Gutierrez. Aye.

5490 Ms. Deterding. Mr. Gutierrez votes aye.

5491 Ms. Bass?

5492 [No response.]

5493 Ms. Deterding. Mr. Richmond?

5494 [No response.]

5495 Ms. Deterding. Ms. DelBene?

5496 Ms. DelBene. Aye.

5497 Ms. Deterding. Ms. DelBene votes aye.

5498 Mr. Garcia?

5499 Mr. Garcia. Aye.

5500 Ms. Deterding. Mr. Garcia votes aye.

5501 Mr. Jeffries?

5502 Mr. Jeffries. Aye.

5503 Ms. Deterding. Mr. Jeffries votes aye.

5504 Mr. Cicilline?

5505 Mr. Cicilline. Aye.

5506 Ms. Deterding. Mr. Cicilline votes aye.

5507 Chairman Goodlatte. The gentleman from Virginia?

5508 Mr. Forbes. No.

5509 Ms. Deterding. Mr. Forbes votes no.

5510 Chairman Goodlatte. The gentleman from North Carolina?

5511 Mr. Coble. No.

5512 Ms. Deterding. Mr. Coble votes no.

5513 Chairman Goodlatte. The gentleman from Iowa?

5514 Mr. King. No.

5515 Ms. Deterding. Mr. King votes no.

5516 Chairman Goodlatte. The gentleman from Texas?

5517 Mr. Gohmert. No.

5518 Ms. Deterding. Mr. Gohmert votes no.

5519 Chairman Goodlatte. Has every Member voted who wishes

5520 to vote?

5521 [No response.]

5522 Chairman Goodlatte. The clerk will report.

5523 Ms. Deterding. Mr. Chairman, 13 Members voted aye; 17

5524 Members voted no.

5525 Chairman Goodlatte. And the amendment is not agreed to.

5526 Are there further amendments to H.R. 4138?

5527 [No response.]

5528 Chairman Goodlatte. If not, the question is on

5529 reporting the bill, H.R. 4138, favorably to the House.

5530 Those in favor, say aye.

5531 Those opposed, vote no.

5532 In the opinion of the chair, the ayes have it.

5533 For what purpose --

5534 Mr. Cicilline. I request a recorded vote.

5535 Chairman Goodlatte. A recorded vote is requested.

5536 Before the clerk calls the roll, the chair wants to advise

5537 Members we will return to the previous bill that was

5538 delayed. So there are additional amendments, I believe, to

5539 H.R. 3732. We will return to that as soon as we complete

5540 the vote on this legislation.

5541 And the clerk will call the roll on reporting H.R. 4138.

5542 Ms. Deterding. Mr. Goodlatte?

5543 Chairman Goodlatte. Aye.

5544 Ms. Deterding. Mr. Goodlatte votes aye.

5545 Mr. Sensenbrenner?

5546 [No response.]

5547 Ms. Deterding. Mr. Coble?

5548 Mr. Coble. Aye.

5549 Ms. Deterding. Mr. Coble votes aye.

5550 Mr. Smith of Texas?

5551 [No response.]

5552 Ms. Deterding. Mr. Chabot?

5553 Mr. Chabot. Aye.

5554 Ms. Deterding. Mr. Chabot votes aye.

5555 Mr. Bachus?

5556 Mr. Bachus. Aye.

5557 Ms. Deterding. Mr. Bachus votes aye.

5558 Mr. Issa?

5559 [No response.]

5560 Ms. Deterding. Mr. Forbes?

5561 Mr. Forbes. Aye.

5562 Ms. Deterding. Mr. Forbes votes aye.

5563 Mr. King?

5564 Mr. King. Aye.

5565 Ms. Deterding. Mr. King votes aye.

5566 Mr. Franks?

5567 [No response.]

5568 Ms. Deterding. Mr. Gohmert?

5569 Mr. Gohmert. Aye.

5570 Ms. Deterding. Mr. Gohmert votes aye.

5571 Mr. Jordan?

5572 [No response.]

5573 Ms. Deterding. Mr. Poe?

5574 [No response.]

5575 Ms. Deterding. Mr. Chaffetz?

5576 [No response.]

5577 Ms. Deterding. Mr. Marino?

5578 Mr. Marino. Aye.

5579 Ms. Deterding. Mr. Marino votes aye.

5580 Mr. Gowdy?

5581 Mr. Gowdy. Aye.

5582 Ms. Deterding. Mr. Gowdy votes aye.

5583 Mr. Labrador?

5584 Mr. Labrador. Yes.

5585 Ms. Deterding. Mr. Labrador votes aye.

5586 Mr. Farenthold?

5587 Mr. Farenthold. Yes.

5588 Ms. Deterding. Mr. Farenthold votes aye.

5589 Mr. Holding?

5590 Mr. Holding. Aye.

5591 Ms. Deterding. Mr. Holding votes aye.

5592 Mr. Collins?

5593 Mr. Collins. Aye.

5594 Ms. Deterding. Mr. Collins votes aye.

5595 Mr. DeSantis?

5596 Mr. DeSantis. Aye.

5597 Ms. Deterding. Mr. DeSantis votes aye.

5598 Mr. Smith of Missouri?

5599 Mr. Smith of Missouri. Yes.

5600 Ms. Deterding. Mr. Smith of Missouri votes aye.

5601 Mr. Conyers?

5602 Mr. Conyers. No.

5603 Ms. Deterding. Mr. Conyers votes no.

5604 Mr. Nadler?

5605 Mr. Nadler. No.

5606 Ms. Deterding. Mr. Nadler votes no.

5607 Mr. Scott?

5608 Mr. Scott. No.

5609 Ms. Deterding. Mr. Scott votes no.

5610 Ms. Lofgren?

5611 Ms. Lofgren. No.

5612 Ms. Deterding. Ms. Lofgren votes no.

5613 Ms. Jackson Lee?

5614 Ms. Jackson Lee. No.

5615 Ms. Deterding. Ms. Jackson Lee votes no.

5616 Mr. Cohen?

5617 Mr. Cohen. No.

5618 Ms. Deterding. Mr. Cohen votes no.

5619 Mr. Johnson?

5620 Mr. Johnson. No.

5621 Ms. Deterding. Mr. Johnson votes no.

5622 Mr. Pierluisi?

5623 Mr. Pierluisi. No.

5624 Ms. Deterding. Mr. Pierluisi votes no.

5625 Ms. Chu?

5626 Ms. Chu. No.

5627 Ms. Deterding. Ms. Chu votes no.

5628 Mr. Deutch?

5629 [No response.]

5630 Ms. Deterding. Mr. Gutierrez?

5631 Mr. Gutierrez. No.

5632 Ms. Deterding. Mr. Gutierrez votes no.

5633 Ms. Bass?

5634 [No response.]

5635 Ms. Deterding. Mr. Richmond?

5636 [No response.]

5637 Ms. Deterding. Ms. DelBene?

5638 Ms. DelBene. No.

5639 Ms. Deterding. Ms. DelBene votes no.

5640 Mr. Garcia?

5641 Mr. Garcia. No.

5642 Ms. Deterding. Mr. Garcia votes no.

5643 Mr. Jeffries?

5644 Mr. Jeffries. No.

5645 Ms. Deterding. Mr. Jeffries votes no.

5646 Mr. Cicilline?

5647 Mr. Cicilline. No.

5648 Ms. Deterding. Mr. Cicilline votes no.

5649 Chairman Goodlatte. The gentleman from Ohio?

5650 Mr. Jordan. Yes.

5651 Ms. Deterding. Mr. Jordan votes aye.

5652 Chairman Goodlatte. The gentleman from Texas?

5653 Mr. Smith of Texas. Aye.

5654 Ms. Deterding. Mr. Smith of Texas votes aye.

5655 Chairman Goodlatte. The gentleman from California?

5656 Ms. Issa. Aye.

5657 Ms. Deterding. Mr. Issa votes aye.

5658 Chairman Goodlatte. Has every Member voted who wishes
5659 to vote?

5660 [No response.]

5661 Chairman Goodlatte. The clerk will report.

5662 Ms. Deterding. Mr. Chairman, 18 Members voted aye; 14
5663 Members voted no.

5664 Chairman Goodlatte. The ayes have it, and the bill is
5665 ordered reported favorably to the House. Members will have
5666 2 days to submit views.

5667 The committee will now return to H.R. 3732, in which we
5668 were considering amendments before we moved to the bill just
5669 passed. Are there Members who have amendments?

5670 For what purpose does the gentlewoman from California
5671 seek recognition?

5672 Ms. Lofgren. Mr. Chairman, I have an amendment at the
5673 desk offered by myself and Mr. Gutierrez.

5674 Chairman Goodlatte. The clerk will report the
5675 amendment.

5676 Ms. Deterding. Amendment to H.R. 3732, offered by Ms.

5677 Lofgren of California and Mr. Gutierrez --

5678 Mr. Chabot. Mr. Chairman?

5679 Chairman Goodlatte. The gentleman from Ohio?

5680 Mr. Chabot. I reserve a point of order.

5681 Chairman Goodlatte. A point of order is reserved, and

5682 the clerk will continue to read.

5683 Ms. Deterding. And Mr. Gutierrez of Illinois. Add at

5684 the end of the bill the following: Section 4, Rule of

5685 Construction. Nothing in this act shall be construed to

5686 prevent funding for the Deputy Assistant Director of Custody

5687 Programs and Community Outreach within United States

5688 Immigration and Customs Enforcement to implement the

5689 directive of August 23, 2013, entitled Facilitating Parental

5690 Interests in the Course of Civil Immigration Enforcement

5691 Activities, including by coordinating with other offices

5692 within United States Immigration and Customs Enforcement to

5693 ensure that, one, minor children are cared for and not left

5694 unattended because of immigration enforcement actions and,

5695 two, individuals in the custody of United States Immigration

5696 and Customs Enforcement are provided a meaningful

5697 opportunity to participate in hearings and other matters

5698 concerning their parental rights over minor children.

5699 [The amendment of Ms. Lofgren and Mr. Gutierrez

5700 follows:]

5701

5702 Chairman Goodlatte. The gentlewoman from California is
5703 recognized for 5 minutes on her amendment.

5704 Ms. Lofgren. Thank you, Mr. Chairman.

5705 This amendment would simply allow funding to continue
5706 for efforts by ICE's Office of Custody Programs and
5707 Community Outreach. That office implements the ICE
5708 directive that is titled Facilitating Parental Interests in
5709 the Course of Civil Immigration Enforcement Activities.

5710 It does so by coordinating with other ICE offices to
5711 ensure that, first, minor children are cared for and not
5712 left unattended because of immigration enforcement actions
5713 relative to their parents and that individuals in ICE
5714 custody are provided a meaningful opportunity to participate
5715 in hearings and other matters concerning parental rights.

5716 Now the detention and removal system poses a risk of
5717 harm to minor children, as well as parental rights of
5718 immigrant parents over their children, and that is why the
5719 Office of Custody Programs and Community Outreach oversees
5720 efforts to ensure the protection of such children, the vast
5721 majority of whom are either United States citizens or lawful
5722 permanent residents.

5723 The office oversees efforts to ensure that children are
5724 not left unattended. When parents are detained, children
5725 are sometimes just left by themselves. And if parents are
5726 sole caregivers and their detention means that children will
5727 be left unattended, that is a risky matter for minor
5728 children.

5729 Through various means, including the national telephone
5730 hotline, the office, community outreach is often the first
5731 ICE office to learn about dangerous situations involving
5732 unattended minor children. And once it is aware of that, it
5733 oversees a response to ensure that minor children are
5734 removed from danger.

5735 Now a lot of people are surprised to hear that children
5736 can be placed in foster care simply because the parent is in
5737 immigration detention. But more than 5,000 children are in
5738 the foster care system today because a parent has been
5739 detained or deported, and more than 80 percent of those
5740 children are American citizens.

5741 The 2010 Women's Commission report, entitled Torn Apart
5742 by Immigration Enforcement: Parental Rights and Immigration
5743 Detention, points out that the vast majority of these

5744 children have loving, committed, and capable parents who
5745 want nothing more than to be reunited with their parents.
5746 Yet gaps in the immigration and welfare system can result in
5747 children languishing in foster care, often at great expense
5748 to taxpayer because logistical impediments make it nearly
5749 impossible for detained and deported parents to participate
5750 in the child welfare process.

5751 This directive tries to address this problem by
5752 preventing children from entering the foster care system
5753 simply because the parent is detained. And it is hard. The
5754 directive is about family values, which I hope we all share
5755 that family is the center of our lives, that children need
5756 and deserve a relationship with their parents regardless of
5757 where their parents came from or what language they speak.

5758 Importantly, the directive does not limit immigration
5759 enforcement in any way. It does not limit, narrow, or in
5760 any way change ICE's ability to enforce immigration laws.
5761 It simply requires that ICE, whenever possible, hold parents
5762 in detention facilities that are reasonably close to where
5763 their children are living and, when necessary, to the
5764 location of family court or child welfare proceedings, that

5765 they facilitate a detained parent's ability to participate
5766 in the State court proceedings that will affect parental
5767 rights, and if a parent provides evidence of the hearing, to
5768 facilitate their participation if it does not pose an undue
5769 logistical burden to ICE or raise safety or security
5770 concerns.

5771 It helps facilitate visits between detained parents and
5772 their children when it is shown that the child welfare
5773 system will look at that as a precondition for family
5774 reunification. It accommodates, to the extent practical,
5775 efforts of parents with final orders to make arrangements
5776 for their children, including getting travel documents for
5777 their kids so that children can join them at the parents'
5778 home country or to arrange for a guardian so that the
5779 children, if they are an American, can remain in the United
5780 States.

5781 It provides detained parents or their representatives
5782 with sufficient notice of deportation when such notice
5783 doesn't raise a security concern so that coordinated travel
5784 arrangements can be made for the parents' children, if
5785 desired. And it coordinates, to the extent practicable,

5786 detained parents' need to access attorneys, consulates,
5787 courts to get either a passport application, to purchase
5788 airline tickets, or to make other travel arrangements for
5789 children. And it also considers on a case-by-case basis
5790 facilitating the temporary return of a parent to participate
5791 in a hearing related to termination of parental rights.

5792 It does not expand ICE's prosecutorial discretion in any
5793 way. It simply reminds ICE personnel of the existing
5794 obligation to weigh whether discretion might be warranted,
5795 giving a host of relevant factors, including whether an
5796 individual is a parent, guardian, or primary caretaker of a
5797 U.S. citizen or permanent resident child.

5798 Mandatory detention laws still trump humanitarian
5799 considerations, meaning that if a parent, guardian, or
5800 primary caretaker is subject to mandatory detention or poses
5801 a risk to safety and security, he or she must be maintained.
5802 The parental interest directive is not a fix to the broken
5803 immigration system. It won't reduce the massive immigration
5804 enforcement system that is tearing families apart. It won't
5805 repair the damage that has been done to hundreds of
5806 thousands of U.S. citizen children who had a parent

5807 deported.

5808 But what it is, quite simply, is a common sense, humane,
5809 smart, noncontroversial best practice that should reflect
5810 our national values and recognize the paramount importance
5811 of the family in the life of the child.

5812 I think most of us would agree that if one is
5813 apprehended for a visa overstay, it shouldn't result in the
5814 termination of your rights as the mom of your child. That
5815 is what this directive is all about. And I would hope that
5816 we would come together and adopt this common sense
5817 amendment, and I yield back.

5818 Chairman Goodlatte. The chair thanks the gentlewoman
5819 and recognizes himself in opposition to the amendment.

5820 This amendment states that nothing in this act shall be
5821 construed to prohibit the Deputy Assistant Director of
5822 Custody Programs and Community Outreach from implementing
5823 the parental interest directives. The problem with this is
5824 that the bill eliminates the position of Deputy Assistant
5825 Director of Custody Programs and Community Outreach. How
5826 can a position that does not exist hear and refer
5827 complaints?

5828 I understand that some Members on the other side of the
5829 aisle do not want to eliminate this position. Apparently,
5830 the Obama administration does not either. However, Congress
5831 has already spoken on this issue when it eliminated the
5832 position of public advocate, the predecessor position to the
5833 Deputy Assistant Director of Custody Programs and Community
5834 Outreach.

5835 If Members think the position of public advocate or
5836 Deputy Assistant Director of Custody Programs and Community
5837 Outreach should exist, they should introduce legislation to
5838 authorize it. We should not allow the President to
5839 circumvent Congress' power of the purse and create the
5840 positions on his own.

5841 Because this would open the door for the President to
5842 unilaterally create or maintain such a position, I oppose
5843 it. And I additionally want to point out that in my
5844 district, there is a prominent case of an individual that
5845 was allowed to be released who had a methamphetamine
5846 conviction because he was a primary caregiver under the
5847 parental interest directive. Subsequently, he was charged
5848 with endangering his children and now is undergoing

5849 adjudication to have his parental rights terminated.

5850 So I think the directive needs to be carefully
5851 considered and reviewed. If the gentlewoman or others want
5852 to introduce legislation to accomplish that goal --

5853 Ms. Lofgren. Would the gentleman yield?

5854 Chairman Goodlatte. I would be happy to yield.

5855 Ms. Lofgren. I just want to make a point, if you take a
5856 look at the bill, Section 3, none of the funds made
5857 available by any Federal law may be used to provide funding
5858 for -- and Item 2 is the position of. It does not eliminate
5859 the position. It relates to funding of the position.

5860 This amendment also relates to funding of the position
5861 and would say that absent -- that the nonfunding directive
5862 in the bill would not apply to the --

5863 Chairman Goodlatte. Reclaiming my time. If you defund
5864 a position, the position is not open to be filled. You
5865 can't volunteer to fill a position in the Federal
5866 Government.

5867 So I understand the gentlewoman's position. But that is
5868 the language of the law. That is the language of the bill.
5869 And if the gentlewoman believes that this program should

5870 exist, she should introduce legislation that would
5871 accomplish that goal, not insist upon allowing the President
5872 to go around the Congress when the Congress has already made
5873 a decision.

5874 Who seeks recognition? The gentleman from Virginia, for
5875 what purpose do you seek recognition?

5876 Mr. Scott. I move to strike the last word.

5877 Chairman Goodlatte. The gentleman is recognized for 5
5878 minutes.

5879 Mr. Scott. I yield to the gentlelady from California to
5880 respond.

5881 Ms. Lofgren. Thank you, Mr. Scott.

5882 One of our colleagues said earlier today that we should
5883 look at this bill and go to intent. And I said, you know,
5884 really what we need to look at is we are lawyers here. We
5885 are writing the law, and what we write matters.

5886 And if you take a look at the bill, it does not
5887 eliminate the position of the Deputy Assistant Director of
5888 Custody Programs and Community Outreach within U.S.
5889 Immigration and Customs Enforcement. It does not eliminate
5890 that position. It says none of the funds made available may

5891 be used for that position.

5892 What the amendment does is to say except for funds used
5893 to implement the directive for the custody programs and
5894 community outreach, the facilitating parental interests in
5895 the course of civil immigration enforcement activities.

5896 Now, as I mentioned earlier, this directive does not
5897 trump anything that would preclude release of an inmate or a
5898 detainee for other reasons. But I have run into, and I am
5899 sure other colleagues have, individuals who have been
5900 apprehended whose minor children come home from school not
5901 knowing that their mother has been arrested, and you have
5902 got an 8-year-old by themselves without a parent or a
5903 guardian.

5904 That is not a conscionable thing. The obligation and
5905 the intent of this directive is to prevent the kind of
5906 hazards that could occur with small children in that
5907 situation.

5908 Further -- and our colleague Lucille Roybal-Allard has a
5909 bill on this -- we have seen the circumstance where
5910 individuals who have been detained for immigration purposes
5911 have had their children removed legally from their custody.

5912 And you know, wherever you are and whether we should
5913 reform the immigration laws, as I think we should, or not, I
5914 would hope that we would agree that if you are a mother and
5915 you have your daughter and because you are -- you have been
5916 detained for immigration purposes, the Government shouldn't
5917 be able to take your child away from you. That is simply
5918 unconscionable. That is not the American way.

5919 And this office is to facilitate parents having an
5920 opportunity to go in and contest that. You know, we are
5921 going to steal somebody's kid and put that child out for
5922 adoption to some other family because that person overstayed
5923 their visa? You think that is the American way? I don't
5924 think so.

5925 So I would hope that we could come together on at least
5926 this modest proposal. It is not as the chairman has
5927 described. It doesn't reintroduce a position that has been
5928 eliminated. The position in the bill is not eliminated. It
5929 simply says that funds may not be used. And the amendment
5930 simply says except for this directive.

5931 And I yield back to Mr. Scott and appreciate your
5932 courtesy in yielding to me.

5933 Mr. Scott. I yield my time.

5934 Mr. Chabot. Mr. Chairman?

5935 Chairman Goodlatte. Who seeks recognition?

5936 Mr. Chabot. Mr. Chairman, down here. I will withdraw
5937 my point of order.

5938 Chairman Goodlatte. The gentleman withdraws his point
5939 of order.

5940 Mr. Gutierrez. Mr. Chairman?

5941 Chairman Goodlatte. For what purpose does the gentleman
5942 from Illinois seek recognition?

5943 Mr. Gutierrez. For 5 minutes, Mr. Chair. Strike the
5944 last word.

5945 Chairman Goodlatte. The gentleman is recognized for 5
5946 minutes.

5947 Mr. Gutierrez. Well, I am very happy to introduce this
5948 amendment with the gentlelady from California. I think it
5949 raises for the committee a very important issue which we
5950 have never discussed. And that is that there are millions
5951 of American citizen children, millions American citizen
5952 children whose parents are undocumented.

5953 The fact is that during the last 5 years, more people

5954 have been deported from the United States than live in the
5955 State of Nebraska. More people have been deported than live
5956 in the State of Nebraska, 1.95 million people. Nearly 2
5957 million.

5958 We know that in 7 out of 10 of these cases, American
5959 citizen children and children, these people live in
5960 families. Husbands, wives, families, and children are
5961 affected. American citizens.

5962 And I hate to think that as these children think back at
5963 this time, they think back at the Federal Government,
5964 government in any sense, as that primary threatener of their
5965 parents. And it is real for them. It is not something that
5966 is mysterious.

5967 I want everybody to consider one moment. In 1 year
5968 alone during the last 5 years, the Obama administration has
5969 detained -- that means they stopped, arrested, and put in
5970 jail -- 420,000 people in 1 year.

5971 Secure Communities, which was enacted under George Bush,
5972 had eight -- eight relationships with local law enforcement,
5973 eight. The Barack Obama administration has expanded it to
5974 over 3,000 across this country.

5975 Four hundred twenty thousand people detained in 1 year
5976 alone, 3,000 agreements across this country. More people
5977 deported and millions of American citizen children. I think
5978 the least we could do is to protect those children and to
5979 protect the rights of those children and see that they
5980 suffer no harm.

5981 I believe that this is in the spirit of the very
5982 proposal that was once made a couple of weeks ago by the
5983 Republican majority. I remember one section that said that
5984 immigrant youth who arrived here through no fault of their
5985 own, under your proposal, the Republican majority proposal
5986 presented before your own caucus, would be granted legal
5987 permanent residency and citizenship. And that a great
5988 measure of the rationale behind that was that they didn't do
5989 anything wrong.

5990 Well, if they didn't do anything wrong, what did
5991 American citizen children do wrong? They didn't do anything
5992 wrong either.

5993 We should protect children. These is the future of
5994 America. And the relationship between the Government and
5995 these children should be one that is sacrosanct.

5996 Now I know a lot of people believe that this doesn't
5997 happen much, but it happens way too much. Five thousand
5998 children in foster care, State government taking away, and
5999 hundreds of parents losing their parental rights in court.
6000 Shouldn't there be a relationship? Shouldn't there be
6001 somebody who makes sure that those children and their
6002 parents have a relationship, that the court proceedings are
6003 such?

6004 I mean, I will just end with this. I want you to think
6005 of anybody in this room, when you are 5 years old, 6 years
6006 old, 7 years old, 8 years old, as a young, tender child and
6007 your mom and dad simply disappear from your life.

6008 Four hundred twenty thousand people were detained in 1
6009 year alone. More people than in the State of Nebraska
6010 eliminated over the last 5 years. This is not an occurrence
6011 that just happens every now and then. It happens every day.
6012 Eleven hundred people will be deported today. Hundreds of
6013 children will be left without a mom or a dad, or both.

6014 And it is the responsibility, I believe, of everybody
6015 here who believes, who has children, has grandchildren, who
6016 have families, that we wouldn't just willy-nilly eliminate

6017 the protection that those children deserve from a process
6018 that their moms and their dads and the children will be able
6019 to negotiate and navigate our broken immigration system.

6020 I thank the chairman.

6021 Chairman Goodlatte. For what purpose does the gentleman
6022 from Ohio seek recognition?

6023 Mr. Chabot. Mr. Chairman, I move to strike the last
6024 word. I will yield my time to the chairman.

6025 Chairman Goodlatte. The gentleman is recognized for 5
6026 minutes and thanks the gentleman for yielding.

6027 I want to say to the gentleman from Illinois, the
6028 gentlewoman from California, we all care very much about
6029 children and that children be with their parents whenever
6030 possible. But here is the nature of this problem. Four
6031 hundred twenty thousand people that the gentleman from
6032 Illinois cited. Of those, two thirds -- two thirds, more
6033 than 160,000 people -- were apprehended at the border.

6034 In past administrations, they were not all counted.
6035 They were simply not allowed to enter the United States. So
6036 when the claim is made that deportations are up, part of
6037 that is because the administration has chosen, for whatever

6038 reason, to take people apprehended at the border and
6039 returned outside of the United States and treat them as
6040 deportations.

6041 Of the remaining one third, of the remaining one third,
6042 fully 83 percent of those people who are deported have
6043 criminal convictions. Criminal convictions. Now many times
6044 when American citizens, and these are serious criminal
6045 convictions, because if it is a minor conviction, they don't
6046 deport them in many instances.

6047 So criminal convictions, in many instances American
6048 citizens and lawful permanent residents, they see their
6049 children put into foster care because it is viewed to be in
6050 the best interest of that child to be in foster care.

6051 Now when it comes to those 83 percent, it is obviously a
6052 very, very serious problem to have a situation like the
6053 situation with Teodoro Cruz, who in my district was released
6054 after a conviction for methamphetamine because he was "a
6055 primary caregiver" under the parental interest directive
6056 that is the subject of what the gentlewoman and the
6057 gentleman's amendment wants to return people, to be able to
6058 make these determinations. And he was subsequently charged

6059 with endangering his children and is now undergoing
6060 adjudication to have his parental rights terminated.

6061 So I don't disagree that there is an appropriate way to
6062 deal with this, but it is not under a position that has been
6063 abolished by the United States Congress under the law. And
6064 under the Anti-Deficiency Act, the law does not allow a
6065 volunteer. So you can talk about whether the position
6066 exists or not. The position cannot be filled under the law.
6067 There can be no one filling the position.

6068 So the solution that is offered here is not a workable
6069 solution. And if the gentlewoman and the gentleman believe
6070 that there is a better way, and I bet there is, they should
6071 offer legislation that comes up with a way to address that
6072 particular problem and in a better way than the parental
6073 interest directive has handled it, in my opinion, so far.

6074 And that, in my opinion, is the correct way to proceed,
6075 not in the form of this amendment, which undercuts the
6076 prerogative and the authority of the Congress, which has
6077 already voted to eliminate this position. So, again, I must
6078 renew my objection to the amendment offered by the
6079 gentlewoman from California.

6080 Mr. Chabot. I will reclaim my time and yield back.

6081 Mr. Garcia. Mr. Chairman?

6082 Chairman Goodlatte. For what purpose does the gentleman
6083 from Florida seek recognition?

6084 Mr. Garcia. I move to strike the last word.

6085 Chairman Goodlatte. The gentleman is recognized for 5
6086 minutes.

6087 Mr. Garcia. I will cede my 5 minutes to the gentlelady
6088 from California.

6089 Ms. Lofgren. Thank you, Mr. Garcia.

6090 Just a couple of comments. I don't know anything about
6091 the case mentioned in your district, Mr. Chairman. I take
6092 you at your word that an error was made in releasing a
6093 convicted drug offender.

6094 But the 5,000 kids in foster care are proof that it
6095 would be a good idea to let the vast majority of parents who
6096 are apprehended who are not drug offenders to be able to
6097 arrange for guardianship for their children or, in the
6098 alternative, to get passports for their kids or to get
6099 airline tickets so their kids can come with them if they are
6100 leaving.

6101 You know, I just think -- I can't believe that this
6102 committee thinks it is appropriate that a person who is
6103 detained for a visa overstay can have her baby taken away
6104 from her and her parental rights terminated with no
6105 opportunity to be heard. That is what this is about.

6106 As to the deportations at the border, as we have heard
6107 in testimony, there is net zero immigration from Mexico
6108 right now. There is as many people going back as there are
6109 coming in, and I think the increased number of deportations
6110 at the border reflects the changing demographics of who is
6111 attempting to enter unlawfully at the southern border.

6112 You cannot simply turn back a Central American
6113 individual into Mexico. The only way you can deal with that
6114 person is to actually engage in deportation proceedings.
6115 The chairman is a former immigration lawyer, and I know that
6116 he is aware of that.

6117 I would further note that deportation carries long-term
6118 harsh penalties for a person who is the recipient of the
6119 deportation order, as compared to an individual who was
6120 merely returned away at the border. And so, to hear the
6121 committee that is constantly complaining their perceived

6122 lack of immigration enforcement to suggest that increased
6123 deportations at the border, which carries a removal and bar
6124 for reentry, is somehow impermissible is kind of
6125 inexplicable.

6126 I do think, and we are trying to do this analysis, if
6127 you take a look at who is a "criminal" who is being
6128 deported, it looks that many of those individuals may have
6129 committed an offense, but it is not the kind of offense that
6130 we are thinking of. As a matter of fact, the most common
6131 felony prosecution in America today. It is not drugs. It
6132 is not guns. It is reentry after removal.

6133 It is people who are trying to get back to Chicago to
6134 their family, to their wives and children, and they are
6135 caught at the border. And they are charged with reentry
6136 after removal, a felony under Federal law.

6137 So while we might not approve of not complying with the
6138 law, I think as human beings, we understand the human need
6139 for parents to try and get back to their children, which is
6140 what this is about.

6141 Now I thank Mr. Garcia for his generosity in yielding me
6142 time, and I would like to recognize the co-author of this

6143 amendment, Mr. Gutierrez. I would yield time to Mr.

6144 Gutierrez.

6145 Mr. Gutierrez. Thank you.

6146 Chairman Goodlatte. Mr. Garcia controls the time, but I

6147 assume he yields to Mr. Gutierrez.

6148 Mr. Gutierrez. Thank you. I thank the gentleman from

6149 Florida.

6150 Let me just say that I am not a lawyer, and I know how

6151 you feel about community organizers. I hope you don't feel

6152 the same way about social workers. I worked for the

6153 Illinois Department of Children and Family Services for 5

6154 years.

6155 I worked with families, with children, all kinds of

6156 children, all kinds of families. And I got to tell you,

6157 working in juvenile court was heartbreaking each and every

6158 day. And I saw, Mr. Chairman, parents who were criminals

6159 lose parental rights of their children, and I saw families

6160 divided.

6161 But let me tell you what I also saw. I also saw a

6162 system that at its core and at its heart had one thing when

6163 you worked as a social worker in juvenile court, and that

6164 was protecting those children and making sure those children
6165 were in a loving, caring relationship that was not foster
6166 care, that was not outside of the bloodline of that family.

6167 And if any of you have ever worked in juvenile court,
6168 you will know that the first priority of the court is to
6169 find a grandmother -- I am sorry, my time is up.

6170 Chairman Goodlatte. Without objection, the gentleman
6171 from Florida is recognized for an additional minute.

6172 Mr. Gutierrez. Thank you.

6173 And for those of us that have worked in this, you know
6174 what we do. We find a grandparent. We find an aunt, an
6175 uncle. We find a family person, somebody that that young,
6176 tender child happens to know, that he calls Pepe or abuelito
6177 or somebody. Somebody that they know that they care about.

6178 And that is what I think fundamentally we are saying
6179 here. We need to make sure that that is happening because
6180 these are still American citizen children. And let me just
6181 say please just look at the way we deal with American
6182 citizen children whose parents are American citizens.
6183 Shouldn't the children -- American citizen children whose
6184 parents are not American citizens be treated, they are still

6185 American citizens whether they are regardless of where their
6186 parents were born or their parents' naturalization.

6187 And let me just say that, Mr. Chairman, I understand.
6188 But I have to say as someone, I know the gentlelady and I
6189 have sponsored legislation. We have been firm and strong
6190 against criminals. I will tell you on the record not
6191 everyone that comes to this country is an immigrant. Some
6192 people come as foreigners to do harm, and we should do
6193 everything in our power.

6194 And the fact that you raised that issue, I always say
6195 you have thousands and thousands of people who should be
6196 deported from this country. And the way we are going to get
6197 to them is by having comprehensive immigration reform, and
6198 we have stood very solidly against criminals.

6199 Chairman Goodlatte. The time of the gentleman has
6200 expired.

6201 For what purpose does the gentlewoman from Washington
6202 seek recognition?

6203 Ms. DelBene. Move to strike the last word.

6204 Chairman Goodlatte. The gentlewoman is recognized for 5
6205 minutes.

6206 Ms. DelBene. Thank you, Mr. Chair.

6207 I yield to Mr. Gutierrez.

6208 Mr. Gutierrez. Thank you.

6209 And we have stood time and time again. I have been
6210 before ICE departments across this country, and you had
6211 never find a time when Luis Gutierrez and others have gone
6212 in to protect criminals.

6213 We have gone in there to protect somebody who has gotten
6214 three driving without a license. Yes, I will admit to that.
6215 Because the local police enforcement sit right out there at
6216 the trailer park and wait time and time again.

6217 And you know what the interesting thing is? That the
6218 person in this particular case that I am talking about paid
6219 the fine. Then they paid the fine. Then they paid the
6220 fine. So you ask me how is it that they kept paying the
6221 fine? Because there was no Secure Communities agreement
6222 before Barack Obama, who then ensured that when the person
6223 got the traffic violation was now sent to an ICE detention
6224 center after they got the same driving without a license.

6225 Look, the fact is that he was trying to provide for his
6226 family. That is not a criminal. So just I have to say, Mr.

6227 Chairman, we should be careful when we raise issues here, as
6228 the gentlelady and I are raising, and the retort is there
6229 was a criminal selling drugs. Because that is not what we
6230 are proposing that criminals selling drugs should be helped
6231 and abetted by this law.

6232 I think we all know we are talking about. We are
6233 talking about men and women who are working hard, who I know
6234 the majority has already -- many Members of the majority
6235 have already said we should try to legalize. That is who we
6236 are talking about here.

6237 So, on two points. Number one, this isn't our side of
6238 the aisle talking about protecting immigrants that are
6239 criminals. That is wrong. I think we would expedite their
6240 quick removal from the United States of America, their
6241 punishment and then removal from the United States of
6242 America.

6243 We are talking about people who have violated
6244 misdemeanor laws. And let me just add to the gentlelady.
6245 She is right. A lot of times, because this is part of a
6246 broader discussion, isn't it? What is the number-one felony
6247 prosecuted by the Federal Government?

6248 Is it kidnapping? Is it extortion? Is it money
6249 laundering? Is it drug smuggling? No. It is illegal
6250 reentry to the United States of America. Yet we continue to
6251 say that we don't enforce.

6252 Wait a minute. We spend \$3.5 billion more on
6253 immigration enforcement than we do on the FBI, the DEA, the
6254 U.S. Marshals, and all other law enforcement. Yes, Barack
6255 Obama spends more money on all those things than everything
6256 else. And it is 10 times as much today as it was under
6257 Ronald Reagan.

6258 Enforcement is there, and children are affected. We
6259 should do what we know is done in every local enforcement
6260 and every juvenile court across this country and every
6261 family court across this country. And we should provide
6262 those same protections for the children, American citizen
6263 children, and we should not punish them because their
6264 parents are undocumented because we cannot find a linkage
6265 between them and their parents.

6266 We can find one. I think we can do better. And that is
6267 simply all we are saying, Mr. Chairman and the majority.

6268 I thank the lady, and I return to her her time.

6269 Ms. DelBene. I yield back.

6270 Chairman Goodlatte. The chair thanks the gentleman and
6271 the gentlelady.

6272 The question occurs on the amendment offered by the
6273 gentlewoman from California.

6274 All those in favor, respond by saying aye.

6275 Those opposed, no.

6276 In the opinion of the chair, the noes have it.

6277 Ms. Lofgren. I would like a recorded vote.

6278 Chairman Goodlatte. A recorded vote is requested, and
6279 the clerk will call the roll.

6280 Ms. Deterding. Mr. Goodlatte?

6281 Chairman Goodlatte. No.

6282 Ms. Deterding. Mr. Goodlatte votes no.

6283 Mr. Sensenbrenner?

6284 [No response.]

6285 Ms. Deterding. Mr. Coble?

6286 [No response.]

6287 Ms. Deterding. Mr. Smith of Texas?

6288 Mr. Smith of Texas. No.

6289 Ms. Deterding. Mr. Smith of Texas votes no.

6290 Mr. Chabot?

6291 Mr. Chabot. No.

6292 Ms. Deterding. Mr. Chabot votes no.

6293 Mr. Bachus?

6294 Mr. Bachus. No.

6295 Ms. Deterding. Mr. Bachus votes no.

6296 Mr. Issa?

6297 [No response.]

6298 Ms. Deterding. Mr. Forbes?

6299 Mr. Forbes. No.

6300 Ms. Deterding. Mr. Forbes votes no.

6301 Mr. King?

6302 Mr. King. No.

6303 Ms. Deterding. Mr. King votes no.

6304 Mr. Franks?

6305 [No response.]

6306 Ms. Deterding. Mr. Gohmert?

6307 Mr. Gohmert. No.

6308 Ms. Deterding. Mr. Gohmert votes no.

6309 Mr. Jordan?

6310 Mr. Jordan. No.

6311 Ms. Deterding. Mr. Jordan votes no.
6312 Mr. Poe?
6313 [No response.]
6314 Ms. Deterding. Mr. Chaffetz?
6315 [No response.]
6316 Ms. Deterding. Mr. Marino?
6317 Mr. Marino. No.
6318 Ms. Deterding. Mr. Marino votes no.
6319 Mr. Gowdy?
6320 Mr. Gowdy. No.
6321 Ms. Deterding. Mr. Gowdy votes no.
6322 Mr. Labrador?
6323 Mr. Labrador. No.
6324 Ms. Deterding. Mr. Labrador votes no.
6325 Mr. Farenthold?
6326 Mr. Farenthold. No.
6327 Ms. Deterding. Mr. Farenthold votes no.
6328 Mr. Holding?
6329 Mr. Holding. No.
6330 Ms. Deterding. Mr. Holding votes no.
6331 Mr. Collins?

6332 Mr. Collins. No.

6333 Ms. Deterding. Mr. Collins votes no.

6334 Mr. DeSantis?

6335 Mr. DeSantis. No.

6336 Ms. Deterding. Mr. DeSantis votes no.

6337 Mr. Smith of Missouri?

6338 Mr. Smith of Missouri. No.

6339 Ms. Deterding. Mr. Smith of Missouri votes no.

6340 Mr. Conyers?

6341 Mr. Conyers. Aye.

6342 Ms. Deterding. Mr. Conyers votes aye.

6343 Mr. Nadler?

6344 Mr. Nadler. Aye.

6345 Ms. Deterding. Mr. Nadler votes aye.

6346 Mr. Scott?

6347 Mr. Scott. Aye.

6348 Ms. Deterding. Mr. Scott votes aye.

6349 Ms. Lofgren?

6350 Ms. Lofgren. Aye.

6351 Ms. Deterding. Ms. Lofgren votes aye.

6352 Ms. Jackson Lee?

6353 [No response.]

6354 Ms. Deterding. Mr. Cohen?

6355 Mr. Cohen. Aye.

6356 Ms. Deterding. Mr. Cohen votes aye.

6357 Mr. Johnson?

6358 Mr. Johnson. Aye.

6359 Ms. Deterding. Mr. Johnson votes aye.

6360 Mr. Pierluisi?

6361 Mr. Pierluisi. Aye.

6362 Ms. Deterding. Mr. Pierluisi votes aye.

6363 Ms. Chu?

6364 Ms. Chu. Aye.

6365 Ms. Deterding. Ms. Chu votes aye.

6366 Mr. Deutch?

6367 [No response.]

6368 Ms. Deterding. Mr. Gutierrez?

6369 Mr. Gutierrez. Aye.

6370 Ms. Deterding. Mr. Gutierrez votes aye.

6371 Ms. Bass?

6372 [No response.]

6373 Ms. Deterding. Mr. Richmond?

6374 [No response.]

6375 Ms. Deterding. Ms. DelBene?

6376 Ms. DelBene. Aye.

6377 Ms. Deterding. Ms. DelBene votes aye.

6378 Mr. Garcia?

6379 Mr. Garcia. Aye.

6380 Ms. Deterding. Mr. Garcia votes aye.

6381 Mr. Jeffries?

6382 Mr. Jeffries. Aye.

6383 Ms. Deterding. Mr. Jeffries votes aye.

6384 Mr. Cicilline?

6385 Mr. Cicilline. Aye.

6386 Ms. Deterding. Mr. Cicilline votes aye.

6387 Chairman Goodlatte. Has every Member voted who wishes

6388 to vote?

6389 [No response.]

6390 Chairman Goodlatte. The clerk will report.

6391 Ms. Deterding. Mr. Chairman, 13 Members voted aye; 16

6392 Members voted no.

6393 Chairman Goodlatte. And the amendment is not agreed to.

6394 For what purpose does the gentlewoman from California

6395 seek recognition?

6396 Ms. Chu. Mr. Chair, I have an amendment at the desk.

6397 Chairman Goodlatte. The clerk will report the

6398 amendment.

6399 Ms. Deterding. Amendment to H.R. 3732, offered by Ms.

6400 Chu of California and Mr. Nadler of New York. Add at the

6401 end of the bill the following --

6402 Chairman Goodlatte. Without objection, the amendment

6403 will be considered as read.

6404 [The amendment of Ms. Chu and Mr. Nadler follows:]

6405

6406 Chairman Goodlatte. And the gentlewoman is recognized
6407 for 5 minutes on her amendment.

6408 Ms. Chu. Mr. Chair, the amendment that I offer with
6409 Congressman Nadler would ensure that nothing in this bill
6410 would prevent the Deputy Assistant Director of Custody
6411 Program and Community Outreach at ICE from helping to
6412 clarify the citizenship status of individuals who are in ICE
6413 custody.

6414 Oftentimes, detained individuals claimed that they may
6415 have citizenship, but are unable to provide the necessary
6416 documents. These individuals may also have derivative
6417 citizenship through their parents, but are unaware of their
6418 status. That is why the Custody Programs and the Community
6419 Outreach Office are so important. The staff there ensures
6420 that these cases do not fall through the cracks.

6421 Wrongful deportations of U.S. citizens do happen, and
6422 they are not isolated cases. Take the well-known case of
6423 Pedro Guzman, a mentally disabled man who was deported to
6424 Mexico even though he was born in the country. Mr. Guzman,
6425 unable to read or write, signed a waiver agreeing to leave
6426 the country without a hearing. He spent months in Mexico

6427 sleeping on the streets while his mother searched in
6428 hospitals and morgues for him.

6429 It is the most vulnerable citizens like this -- the
6430 young, the poor, and the mentally ill -- who are susceptible
6431 to wrongful deportations. The elimination of funding for
6432 the director of the Custody Programs and Community Outreach
6433 Office would only lead to more travesties of justice like
6434 this. People like Pedro Guzman face long periods of
6435 separation from their families, often spending months in
6436 detention trying to prove their citizenship claim. In the
6437 worst case scenario, many are permanently separated from
6438 their families unaware that they have a valid claim to U.S.
6439 citizenship.

6440 Eliminating funding for ICE's director of custody
6441 programs and community outreach would only lead to more
6442 unjust and wrongful deportations of our country's citizens.
6443 Our amendment will ensure that this position and program
6444 will continue to work to prevent cases like that of Pedro
6445 Guzman's. I urge my colleagues to support this amendment,
6446 and I yield back.

6447 Chairman Goodlatte. The chair thanks the gentlewoman

6448 and recognizes himself in opposition to the amendment. The
6449 public advocate position is duplicative in many respects as
6450 the Department of Homeland Security has many avenues for the
6451 public to make complaints involving DHS employees, programs,
6452 alleged violations of civil rights and civil liberties,
6453 immigration claims, travel redress, and other grievances.
6454 There is a 12-page guide posted on the DHS website that
6455 explains all these avenues of relief. In fact, without
6456 objection, I will make that 12-page guide a part of the
6457 record.

6458 [The information follows:]

6459

6460 Chairman Goodlatte. Further, the ICE Office of
6461 Professional Responsibility takes complaints regarding ICE
6462 officials and their conduct. There is a hotline and
6463 complaint contact in virtually every ICE office. So to
6464 imply that by eliminating this position this bill eliminates
6465 the only hotline someone can use to raise complaints is
6466 wholly inaccurate. And I would like to enter into the
6467 record now also the Office of Professional Responsibility
6468 documents to show the numerous avenues available to the
6469 public to raise complaints.

6470 [The information follows:]

6471

6472 Chairman Goodlatte. And as a result I must oppose this
6473 amendment.

6474 For what purpose does the gentleman from New York seek
6475 recognition?

6476 Mr. Nadler. Strike the last word.

6477 Chairman Goodlatte. The gentleman is recognized for 5
6478 minutes.

6479 Mr. Nadler. Mr. Chairman, I strongly support this
6480 amendment, and I join Ms. Chu in offering it with her.
6481 Unfortunately, I have before me a stack of newspaper
6482 articles documenting cases of the Immigration and Customs
6483 Enforcement Agency incorrectly and illegally deporting U.S.
6484 citizens. One article notes that "Mistakes are on the
6485 uptick as U.S. authorities have notched record deportation
6486 levels in recent years."

6487 Now, we all know that U.S.-born citizens cannot even be
6488 detained by the immigration officials, let alone deported.
6489 So why is this happening? Unfortunately, people who are
6490 indigent, mentally disturbed, ex-convicts, or those who
6491 cannot easily prove they were born in the United States are
6492 most susceptible to mistaken deportations. In one case, a

6493 15-year-old girl from Dallas, Jakadrien Turner, was deported
6494 to Colombia, even though she did not speak a word of
6495 Spanish. In other case, Bianca Alfaro born in Houston was
6496 mistakenly stripped of her U.S. passport by U.S. officials.
6497 She did speak Spanish, but was born in the United States,
6498 and has since moved to Long Island. Then there's Mark
6499 Ridell who was deported to Mexico in 2008. He has a history
6500 of mental illness, but he was born in North Carolina, and
6501 there was no reason why he should have been deported.

6502 When ICE is deporting record numbers of people, there
6503 are going to be mistakes. All we are saying with this
6504 amendment is to allow those claiming to be U.S. citizens to
6505 have access to a hotline and to have their complaints heard
6506 by the deputy assistant director of custody programs and
6507 community outreach. This bill would eliminate the position
6508 and anything similar to the position, which would probably,
6509 assuming the bill were constitutional, which it is not,
6510 eliminate the hotline because you would say it was similar,
6511 too, although we do not know what "similar, too" means, as
6512 we said before. But we have to assume if this bill would do
6513 anything, it would eliminate the means of redress that the

6514 chairman referred to that these people desperately need.

6515 Now, this amendment would not solve the problems with
6516 the bill, but it would at least with respect to people being
6517 wrongfully deported, with respect to American citizens, give
6518 them a fighting chance. So I urge the adoption of the
6519 amendment.

6520 Chairman Goodlatte. The question occurs on the
6521 amendment offered by the gentlewoman from California.

6522 All those in favor, respond by saying aye.

6523 Those opposed, no.

6524 In the opinion of the chair, the noes have it.

6525 Ms. Chu. I ask for a recorded vote.

6526 Chairman Goodlatte. A recorded vote is requested, and
6527 the clerk will call the roll.

6528 Ms. Deterding. Mr. Goodlatte?

6529 Chairman Goodlatte. No.

6530 Ms. Deterding. Mr. Goodlatte votes no.

6531 Mr. Sensenbrenner?

6532 [No response.]

6533 Ms. Deterding. Mr. Coble?

6534 [No response.]

6535 Ms. Deterding. Mr. Smith of Texas?

6536 Mr. Smith of Texas. No.

6537 Ms. Deterding. Mr. Smith of Texas votes no.

6538 Mr. Chabot?

6539 Mr. Chabot. No.

6540 Ms. Deterding. Mr. Chabot votes no.

6541 Mr. Bachus?

6542 Mr. Bachus. No.

6543 Ms. Deterding. Mr. Bachus votes no.

6544 Mr. Issa?

6545 [No response.]

6546 Ms. Deterding. Mr. Forbes?

6547 Mr. Forbes. No.

6548 Ms. Deterding. Mr. Forbes votes no.

6549 Mr. King?

6550 Mr. King. No.

6551 Mr. Deterding. Mr. King votes no.

6552 Mr. Franks?

6553 [No response.]

6554 Ms. Deterding. Mr. Gohmert?

6555 Mr. Gohmert. No.

6556 Ms. Deterding. Mr. Gohmert votes no.
6557 Mr. Jordan?
6558 Mr. Jordan. No.
6559 Ms. Deterding. Mr. Jordan votes no.
6560 Mr. Poe?
6561 [No response.]
6562 Ms. Deterding. Mr. Chaffetz?
6563 [No response.]
6564 Ms. Deterding. Mr. Marino?
6565 Mr. Marino. No.
6566 Ms. Deterding. Mr. Marino votes no.
6567 Mr. Gowdy?
6568 Mr. Gowdy. No.
6569 Ms. Deterding. Mr. Gowdy votes no.
6570 Mr. Labrador?
6571 Mr. Labrador. No.
6572 Ms. Deterding. Mr. Labrador votes no.
6573 Mr. Farenthold?
6574 Mr. Farenthold. No.
6575 Ms. Deterding. Mr. Farenthold votes no.
6576 Mr. Holding?

6577 Mr. Holding. No.

6578 Ms. Deterding. Mr. Holding votes no.

6579 Mr. Collins?

6580 Mr. Collins. No.

6581 Ms. Deterding. Mr. Collins votes no.

6582 Mr. DeSantis?

6583 Mr. DeSantis. No.

6584 Ms. Deterding. Mr. DeSantis votes no.

6585 Mr. Smith of Missouri?

6586 Mr. Smith of Missouri. No.

6587 Ms. Deterding. Mr. Smith of Missouri votes no.

6588 Mr. Conyers?

6589 Mr. Conyers. Aye.

6590 Ms. Deterding. Mr. Conyers votes aye.

6591 Mr. Nadler?

6592 Mr. Nadler. Aye.

6593 Ms. Deterding. Mr. Nadler votes aye.

6594 Mr. Scott?

6595 Mr. Scott. Aye.

6596 Ms. Deterding. Mr. Scott votes aye.

6597 Ms. Lofgren?

6598 Ms. Lofgren. Aye.

6599 Ms. Deterding. Ms. Lofgren votes aye.

6600 Ms. Jackson Lee?

6601 [No response.]

6602 Ms. Deterding. Mr. Cohen?

6603 Mr. Cohen. Aye.

6604 Ms. Deterding. Mr. Cohen votes aye.

6605 Mr. Johnson?

6606 Mr. Johnson. Aye.

6607 Ms. Deterding. Mr. Johnson votes aye.

6608 Mr. Pierluisi?

6609 Mr. Pierluisi. Aye.

6610 Ms. Deterding. Mr. Pierluisi votes aye.

6611 Ms. Chu?

6612 Ms. Chu. Aye.

6613 Ms. Deterding. Ms. Chu votes aye.

6614 Mr. Deutch?

6615 [No response.]

6616 Ms. Deterding. Mr. Gutierrez?

6617 Mr. Gutierrez. Aye.

6618 Ms. Deterding. Mr. Gutierrez votes aye.

6619 Ms. Bass?

6620 [No response.]

6621 Ms. Deterding. Mr. Richmond?

6622 [No response.]

6623 Ms. Deterding. Ms. DelBene?

6624 Ms. DelBene. Aye.

6625 Ms. Deterding. Ms. DelBene votes aye.

6626 Mr. Garcia?

6627 Mr. Garcia. Aye.

6628 Ms. Deterding. Mr. Garcia votes aye.

6629 Mr. Jeffries?

6630 [No response.]

6631 Ms. Deterding. Mr. Cicilline?

6632 Mr. Cicilline. Aye.

6633 Ms. Deterding. Mr. Cicilline votes aye.

6634 Chairman Goodlatte. Has every member voted who wishes

6635 to vote?

6636 [No response.]

6637 Chairman Goodlatte. The clerk will report.

6638 Ms. Deterding. Mr. Chairman, 12 members voted aye, 16

6639 members voted no.

6640 Chairman Goodlatte. And the amendment is not agreed to.

6641 Are there further amendments to H.R. 3732?

6642 For what purpose does the gentlewoman from Washington
6643 seek recognition?

6644 Ms. DelBene. I have an amendment at the desk offered by
6645 myself and Mr. Nadler.

6646 Chairman Goodlatte. The clerk will report the
6647 amendment.

6648 Ms. Deterding. Amendment to H.R. 3732, offered by Ms.
6649 DelBene of Washington and Mr. Nadler of New York, add at the
6650 end of the bill" --

6651 Chairman Goodlatte. Without objection, the amendment
6652 will be considered as read.

6653 [The amendment of Ms. DelBene and Mr. Nadler follows:]

6654

6655 Chairman Goodlatte. And the gentlewoman is recognized
6656 for 5 minutes on her amendment.

6657 Ms. DelBene. Thank you, Mr. Chair. No one detained by
6658 the U.S. government should receive inhumane treatment,
6659 whether facing criminal charges or immigration proceedings,
6660 whether U.S. citizen or immigrant, and especially pregnant
6661 women. Since 2008, the Federal Bureau of Prisons has
6662 prohibited the shackling of pregnant inmates except in the
6663 most extreme cases, and 18 States have enacted laws
6664 prohibiting or restricting shackling of pregnant prisoners.

6665 There is a good reason for these laws and policies:
6666 restraining or shackling pregnant women endangers their
6667 health and their pregnancy. It increases the woman's
6668 chances of miscarriages, accidental falls, and development
6669 of life threatening blood clots. The American Congress of
6670 Obstetricians and Gynecologists, the American Medical
6671 Association, and the American Public Health Association have
6672 recognized that shackling women during labor, delivery, and
6673 postpartum recovery is dangerous to a woman's health and
6674 well-being, and may harm her fetus during birth.

6675 In immigration detention facilities, there is simply no

6676 compelling justification for the use of restraints on
6677 pregnant women in most circumstances. In fact, the policy
6678 included in the most recent Immigration and Customs
6679 Enforcement performance-based national standards states that
6680 "Restraints or shackling of pregnant women is prohibited
6681 absent extraordinary circumstances." The exception to the
6682 ICE use of force policy applies to pregnant women detainees,
6683 unless they present a flight risk or a danger to their own
6684 lives or the lives of others. That is only extraordinary
6685 circumstances when restraints are deemed necessary, and they
6686 are never permitted on women who are in active labor or
6687 delivery.

6688 However, what has become clear is that many facilities
6689 holding ICE detainees are not following this standard, and
6690 others are not necessarily subject to these standards, for
6691 example, ICE detainees held in county jails under ICE
6692 detainers.

6693 There is bipartisan recognition that this is
6694 unacceptable. During Senate debate last year on immigration
6695 reform legislation, Senators Patty Murray and Mike Crapo
6696 introduced an amendment that would have extended the

6697 existing ICE prohibition on shackling pregnant women to
6698 include all pregnant women in detention or held under an ICE
6699 detainer. While this amendment did not receive a vote
6700 during the debate on the immigration bill, report language
6701 in the omnibus Fiscal Year 2014 budget bill, passed by
6702 Congress in January of 2014, H.R. 3547, requires ICE to
6703 "ensure all detention contracts and agreements implement the
6704 use of force exception for all pregnant women in ICE
6705 detention."

6706 My amendment and Mr. Nadler's amendment will ensure that
6707 funding is maintained for hearing and referring complaints
6708 related to pregnant women in ICE custody whose treatment may
6709 violate the policies that should be in place. It will help
6710 to ensure that pregnant detainees are not subject to
6711 unnecessary restraining or shackling. And I urge my
6712 colleagues to support this amendment.

6713 Chairman Goodlatte. The chair thanks the gentlewoman
6714 and recognizes himself in opposition to the amendment.

6715 As indicated in my earlier remarks and as evidenced by
6716 the documents that I submitted for the record, there are a
6717 multitude of ways for people to address the serious problems

6718 identified by the gentlewoman from Washington State without
6719 the necessity of utilizing a position that has already been
6720 defunded, eliminated by the United States Congress. And I
6721 will recount why it is that we are here today.

6722 In February of 2012, the Obama Administration announced
6723 the creation of a public advocate position within ICE to
6724 serve as a point of contact for illegal and criminal
6725 immigrants in deportation proceedings, as well as for
6726 illegal alien advocacy and community groups. In the summer
6727 of 2012, Representative Black introduced an amendment to the
6728 Department of Homeland Security Appropriations Act of 2013
6729 to defund the public advocate position. The amendment
6730 passed the House of Representatives by a voice vote. This
6731 same language was included in H.R. 933, the final continuing
6732 resolution that President Obama signed into law on March
6733 26th, 2013.

6734 The clause read, "None of the funds made available by
6735 this act may be used to provide funding for the position of
6736 public advocate within the U.S. Immigration and Customs
6737 Enforcement." However, last August it was discovered that
6738 rather than eliminating the public advocate position, the

6739 Administration quietly changed the title of "public
6740 advocate" to "deputy assistant director of custody programs
6741 and community outreach" to avoid complying with the very law
6742 the President signed. It was a change in name only. The
6743 Administration kept the same person in the position, made no
6744 changes to the job itself.

6745 In fact, prior to Congress' defunding of the public
6746 advocate position, the deputy assistant director of custody
6747 programs and community outreach did not exist. And since
6748 its creation, the Office of Custody Programs and Community
6749 Outreach has housed a number of programs and staff members
6750 who previously operated within the Office of the Public
6751 Advocate. The evidence is very clear the President
6752 circumvented the will of the Congress. The Congress has
6753 defunded this program, and this legislation is designed to
6754 make sure that that is indeed recognized as the law of the
6755 land.

6756 So there are plenty of issues to be addressed with
6757 regard to the detention of illegal immigrants, and those
6758 methodologies still exist in the form of hotlines and in the
6759 form of other offices within the Department of Homeland

6760 Security that can handle these matters. And if the
6761 gentlewoman and others who feel that those are not adequate
6762 and wish to pursue this through legislative means, they can
6763 do so. But this is not the appropriate place to do so in a
6764 position that the Congress has already eliminated. And,
6765 therefore, I must oppose the amendment offered by the
6766 gentlewoman.

6767 For what purpose does the gentleman from New York seek
6768 recognition?

6769 Mr. Nadler. Strike the last word.

6770 Chairman Goodlatte. The gentleman is recognized for 5
6771 minutes.

6772 Mr. Nadler. Mr. Chairman, this amendment offered by the
6773 gentlelady from Washington and myself is narrowly crafted to
6774 provide much needed assistance to pregnant women, a
6775 population that all of us on both sides of the aisle claim
6776 to support. Unfortunately, this support is often pledged by
6777 my Republicans colleagues only in the context of their bills
6778 to restrict the fundamental and constitutionally protected
6779 right of a woman to decide whether to carry a pregnancy to
6780 term.

6781 With this amendment, however, we have a real chance to
6782 do something on a bipartisan basis that affirmatively
6783 protects women's health and their right to appropriate and
6784 necessary medical care while being detained by virtue of our
6785 immigration laws. The amendment simply ensures that
6786 pregnant women can bring mistreatment to the attention of
6787 the Administration with the hope that they will receive
6788 relief, including the provision of appropriate medical care
6789 instead of mistreatment. Providing a hotline and resources
6790 to register and address such complaints is one of the many
6791 critical functions served by the position of deputy
6792 assistant director of custody programs and community
6793 outreach that H.R. 3732 seeks to destroy.

6794 This amendment protects pregnant women from bearing the
6795 brunt of the majority's unsubstantiated allegations that the
6796 President somehow failed to faithfully execute the law by
6797 ensuring, among other things, that the Administration hears
6798 about and is responsive to concerns about mistreatment of
6799 individuals being detained by virtue of our immigration
6800 laws.

6801 One of the core issues that this amendment addresses is

6802 the continued shackling and restraint of pregnant women.
6803 Pregnant women pose little or no threat to security,
6804 especially during labor, delivery, and postpartum care.
6805 Shackling and restraining and otherwise refusing to ensure
6806 appropriate, necessary, and humane medical treatment and
6807 care place the health and life of pregnant women and their
6808 unborn fetuses at grave risk. For example, shackling
6809 increases a woman's chance of miscarriage and the
6810 development of life threatening blood clots. And restraints
6811 impede the ability of medical professionals to perform
6812 necessary and possibly life-saving medical procedures.

6813 Despite ICE standards prohibiting the use of restraints
6814 on pregnant women, some ICE facilities are not following
6815 these rules, and other detention facilities, such as county
6816 jails, are not subject to these standards. Knowing that
6817 this problem still exists, it is inconceivable and
6818 unconscionable for Congress to erect barriers that will
6819 prevent the Administration from finding out about and
6820 addressing it.

6821 But as currently drafted, H.R. 3732 would do exactly
6822 this. By prohibiting the Administration from performing the

6823 critical functions of the deputy assistant director of
6824 custody programs and community outreach that this position
6825 does, this bill leaves those in detention, including
6826 pregnant women, without any means for registering complaints
6827 or receiving assistance. At a minimum, we should take the
6828 simple step of passing this narrow amendment to ensure that
6829 the Administration can find out about and assist women who
6830 are being mistreated or denied necessary medical care while
6831 pregnant and in detention under our immigration laws. There
6832 is no conceivable reason to vote against this amendment.
6833 This is a real opportunity for each of us to prove that we
6834 mean what we say when we claim an interest in women's
6835 health.

6836 Now, the Administration did not do an end run around the
6837 law. The law was simply a prohibition of a title, and
6838 probably because it was a prohibition only of a title the
6839 Senate did not object to it. Had it been drafted to be
6840 effective, there might have been objection to it. Now, this
6841 bill, by saying that nothing may be done similar to, insofar
6842 as that language has any meaning at all, would seem to
6843 prevent the specific kinds of treatment that this office is

6844 now doing by anybody.

6845 So when the chairman says that these things will be
6846 done, that there can be hotlines, that there can be ways for
6847 pregnant women who are being shackled or otherwise
6848 mistreated, notifying the Administration, those functions
6849 would seem to be similar to what this office is now doing.
6850 And if they are similar to, this bill would prevent it from
6851 being done.

6852 So the law that exists now did not prevent it from being
6853 done, and that is not because the President did an end run
6854 around it. It is because the law was very specific and
6855 prohibited a title, not a function. The function continued,
6856 but this bill would outlaw the function or any function
6857 similar to those now being done by that office, and would
6858 eliminate all the kinds of services that are necessary to
6859 prevent shackling and mistreatment of these women.

6860 And if we are interested in continuing these services,
6861 as the chairman says he is, we should either not pass the
6862 bill or, at the minimum, approve this amendment so the bill
6863 would not do what it otherwise would do to prevent these
6864 services. I yield back.

6865 Chairman Goodlatte. For what purpose does the gentleman
6866 from Michigan seek recognition?

6867 Mr. Conyers. Mr. Chairman, I rise in support of the
6868 amendment.

6869 Chairman Goodlatte. The gentleman is recognized for 5
6870 minutes.

6871 Mr. Conyers. And I am struck by the attempt to treat
6872 these people as human beings that need our assistance, which
6873 we can give so easily. Actually, the amendment is very
6874 modest. We should be inquiring about the whole program and
6875 how we can build it up. And so in the name of sympathy, and
6876 fairness, and some of the sorrow that I have for people that
6877 are caught up in the situation, I would urge as many of us
6878 as we can to lay down our legal armor and legislative skills
6879 and just do something because it is the right thing to do.

6880 Ms. Lofgren. Would the gentleman yield?

6881 Mr. Conyers. Of course.

6882 Ms. Lofgren. And I thank the gentleman for yielding.
6883 You know, I do think that this is an important issue, and I
6884 think it is important to correct a misunderstanding. This
6885 bill does not eliminate the position of deputy assistant

6886 director of custody programs, and it simply says no funds
6887 may be used.

6888 The amendment offered by Ms. DelBene indicates that
6889 funds could be used for this purpose, so this is an
6890 important and narrow connection. But as Mr. Nadler has
6891 pointed out, because of the chairman's manager's amendment,
6892 we have expanded the prohibition on funding to anything that
6893 is similar to what this office is currently doing. And what
6894 this office is currently doing is accepting complaints and
6895 running interference when there is shackling or restraints
6896 on pregnant women.

6897 Now, I can talk about this issue of pregnancy and
6898 delivery in a way that none of my colleagues on the other
6899 side of the aisle because I have given birth. And I cannot
6900 imagine any reason why a woman in labor would be put in
6901 restraints. I mean, believe me, you are not in a position
6902 to do anything else when you are in labor, and yet that
6903 happens. And when it happens, that baby is actually at risk
6904 because if something goes wrong, if you need to intervene in
6905 a hurry, you have got shackles. You have got interference
6906 with the medical care that might be needed.

6907 We have had many spirited arguments about issues of
6908 children, and some of my colleagues on the other side of the
6909 aisle describe themselves as pro-life. Well, if you are
6910 pro-life, you would not want to see a woman giving birth to
6911 be shackled, and you would not want to approve this bill
6912 without Ms. DelBene's amendment. This is hazardous to
6913 children being born. It is an outrageous humiliation to
6914 women in childbirth. And unless we pass this amendment by
6915 the plain language of the bill as amended by the chairman's
6916 amendment, the interference that is provided by this office
6917 to prevent women from being shackled if they are pregnant or
6918 giving birth will be eliminated as a function in ICE.

6919 I think that is immoral, and I cannot believe that the
6920 members of this committee on a bipartisan basis would
6921 approve of that. And I yield back, Mr. Conyers. I thank
6922 you for the time.

6923 Mr. Conyers. Well, I just wanted to close this end of
6924 the discussion by saying that I cannot believe that there
6925 are any members representing people in congressional
6926 districts that would oppose us doing the humane and
6927 sympathetic thing here. I cannot see this as being a

6928 dangerous or controversial amendment in many places -- well,
6929 in most places in America. And I urge our members on both
6930 sides of the aisle to join in with the humanity that is
6931 involved in this proposal. And I yield back the balance of
6932 my time.

6933 Chairman Goodlatte. The question occurs on the
6934 amendment offered by the gentlewoman from Washington.

6935 All those in favor, respond by saying aye.

6936 Those opposed, no.

6937 In the opinion of the chair, the noes have it.

6938 Ms. DelBene. Mr. Chair, I ask for a recorded vote.

6939 Chairman Goodlatte. A recorded vote is requested, and
6940 the clerk will call the roll.

6941 Ms. Deterding. Mr. Goodlatte?

6942 Chairman Goodlatte. No.

6943 Ms. Deterding. Mr. Goodlatte votes no.

6944 Mr. Sensenbrenner?

6945 [No response.]

6946 Ms. Deterding. Mr. Coble?

6947 [No response.]

6948 Ms. Deterding. Mr. Smith of Texas?

6949 Mr. Smith of Texas. No.

6950 Ms. Deterding. Mr. Smith of Texas votes no.

6951 Mr. Chabot?

6952 Mr. Chabot. No.

6953 Ms. Deterding. Mr. Chabot votes no.

6954 Mr. Bachus?

6955 [No response.]

6956 Ms. Deterding. Mr. Issa?

6957 [No response.]

6958 Ms. Deterding. Mr. Forbes?

6959 Mr. Forbes. No.

6960 Ms. Deterding. Mr. Forbes votes no.

6961 Mr. King?

6962 Mr. King. No.

6963 Mr. Deterding. Mr. King votes no.

6964 Mr. Franks?

6965 [No response.]

6966 Ms. Deterding. Mr. Gohmert?

6967 [No response.]

6968 Ms. Deterding. Mr. Jordan?

6969 [No response.]

6970 Ms. Deterding. Mr. Poe?
6971 [No response.]
6972 Ms. Deterding. Mr. Chaffetz?
6973 [No response.]
6974 Ms. Deterding. Mr. Marino?
6975 Mr. Marino. No.
6976 Ms. Deterding. Mr. Marino votes no.
6977 Mr. Gowdy?
6978 Mr. Gowdy. No.
6979 Ms. Deterding. Mr. Gowdy votes no.
6980 Mr. Labrador?
6981 [No response.]
6982 Ms. Deterding. Mr. Farenthold?
6983 Mr. Farenthold. No.
6984 Ms. Deterding. Mr. Farenthold votes no.
6985 Mr. Holding?
6986 Mr. Holding. No.
6987 Ms. Deterding. Mr. Holding votes no.
6988 Mr. Collins?
6989 Mr. Collins. No.
6990 Ms. Deterding. Mr. Collins votes no.

6991 Mr. DeSantis?

6992 Mr. DeSantis. No.

6993 Ms. Deterding. Mr. DeSantis votes no.

6994 Mr. Smith of Missouri?

6995 Mr. Smith of Missouri. No.

6996 Ms. Deterding. Mr. Smith of Missouri votes no.

6997 Mr. Conyers?

6998 Mr. Conyers. Aye.

6999 Ms. Deterding. Mr. Conyers votes aye.

7000 Mr. Nadler?

7001 Mr. Nadler. Aye.

7002 Ms. Deterding. Mr. Nadler votes aye.

7003 Mr. Scott?

7004 Mr. Scott. Aye.

7005 Ms. Deterding. Mr. Scott votes aye.

7006 Ms. Lofgren?

7007 Ms. Lofgren. Aye.

7008 Ms. Deterding. Ms. Lofgren votes aye.

7009 Ms. Jackson Lee?

7010 Ms. Jackson Lee. Aye.

7011 Ms. Deterding. Ms. Jackson Lee votes aye.

7012 Mr. Cohen?

7013 [No response.]

7014 Ms. Deterding. Mr. Johnson?

7015 Mr. Johnson. Aye.

7016 Ms. Deterding. Mr. Johnson votes aye.

7017 Mr. Pierluisi?

7018 Mr. Pierluisi. Aye.

7019 Ms. Deterding. Mr. Pierluisi votes aye.

7020 Ms. Chu?

7021 Ms. Chu. Aye.

7022 Ms. Deterding. Ms. Chu votes aye.

7023 Mr. Deutch?

7024 Mr. Deutch. Aye.

7025 Ms. Deterding. Mr. Deutch votes aye.

7026 Mr. Gutierrez?

7027 Mr. Gutierrez. Aye.

7028 Ms. Deterding. Mr. Gutierrez votes aye.

7029 Ms. Bass?

7030 [No response.]

7031 Ms. Deterding. Mr. Richmond?

7032 [No response.]

7033 Ms. Deterding. Ms. DelBene?

7034 Ms. DelBene. Aye.

7035 Ms. Deterding. Ms. DelBene votes aye.

7036 Mr. Garcia?

7037 Mr. Garcia. Aye.

7038 Ms. Deterding. Mr. Garcia votes aye.

7039 Mr. Jeffries?

7040 [No response.]

7041 Ms. Deterding. Mr. Cicilline?

7042 Mr. Cicilline. Aye.

7043 Ms. Deterding. Mr. Cicilline votes aye.

7044 Chairman Goodlatte. The gentleman from Tennessee?

7045 Mr. Cohen. Aye.

7046 Ms. Deterding. Mr. Cohen votes aye.

7047 Chairman Goodlatte. The gentleman from Idaho?

7048 Mr. Labrador. No.

7049 Ms. Deterding. Mr. Labrador votes no.

7050 Chairman Goodlatte. The gentleman from Ohio?

7051 Mr. Jordan. No.

7052 Ms. Deterding. Mr. Jordan votes no.

7053 Chairman Goodlatte. The gentleman from Texas?

7054 Mr. Gohmert. No.

7055 Ms. Deterding. Mr. Gohmert votes no.

7056 Chairman Goodlatte. Is there another member? Has every
7057 member voted who wishes to vote?

7058 [No response.]

7059 Chairman Goodlatte. The clerk will report.

7060 Ms. Deterding. Mr. Chairman, 14 members voted aye, 15
7061 members voted no.

7062 Chairman Goodlatte. And the amendment is not agreed to.

7063 Ms. Jackson Lee. Mr. Chairman?

7064 Chairman Goodlatte. For what purpose does the
7065 gentlewoman from Texas seek recognition?

7066 Ms. Jackson Lee. I have an amendment at the desk, Mr.
7067 Chairman.

7068 Chairman Goodlatte. The clerk will report the
7069 amendment.

7070 Ms. Deterding. Amendment to H.R. 3732, offered by Ms.
7071 Jackson Lee of Texas, add at the end of the bill the
7072 following: "Section 4, Rule of Construction, nothing in
7073 this act shall be construed to" --

7074 Chairman Goodlatte. Without objection, the amendment

7075 will be considered as read.

7076 [The amendment of Ms. Jackson Lee follows:]

7077

7078 Chairman Goodlatte. And the gentlewoman is recognized
7079 for 5 minutes on her amendment.

7080 Ms. Jackson Lee. I thank the gentleman, and I would ask
7081 the gentleman to allow me a moment to speak out of order
7082 regarding votes that I missed. H.R. 3973, faithful
7083 execution, as it called by the majority. I was detained on
7084 a hearing and meeting with international diplomats, and so,
7085 if I was present, I would have voted no. I ask unanimous
7086 consent to be placed in the record. And I did not offer my
7087 amendment, which I intend to offer going forward if the bill
7088 goes to the floor.

7089 With respect to the amendment on the ICE, 3732, the
7090 Lofgren-Gutierrez amendment, I was detained on the floor.
7091 If I was present I would have voted aye. On the Chu
7092 amendment, if I was present I would have voted aye. I would
7093 appreciate that this be placed appropriately in the record.
7094 I ask unanimous consent.

7095 Chairman Goodlatte. Without objection, the
7096 gentlewoman's statement will be made a part of the record.

7097 Ms. Jackson Lee. Thank you. My amendment regarding
7098 H.R. 3732 is very clear in that it speaks to the issue of

7099 imminent -- excuse me, I am sorry -- speaks to the issue of
7100 medical concerns that a person detained by ICE would need.
7101 And so it involves funding for ensuring medical care for
7102 life threatening illnesses.

7103 I want to re-emphasize, Mr. Chairman, a distinction that
7104 I think is important, and that is that I believe that anyone
7105 reading the bill and knowing that there was a higher
7106 calling, a higher charge, which was to get this omnibus bill
7107 signed and passed that dealt with funding of many agencies,
7108 that if you read it you would suppose that they were
7109 suggesting the lack of funding of a particular title.

7110 Our amendments that have been unfortunately rejected by
7111 the majority deal with services, deal with important
7112 services, not illegal services, not unconstitutional
7113 services, not bizarre services, but services, all around the
7114 humanitarian issue whether it was sexual assault, the
7115 protection of minor children, or the issue of medical care
7116 for life threatening illnesses. So my amendment provides
7117 for the opportunity for these services to be continued, and
7118 that is to protect the detainees that are now in the custody
7119 of the ICE officers to ensure that they have the ability to

7120 receive the appropriate medical care for life threatening
7121 conditions.

7122 Again, it is not a title that you might suggest was
7123 inappropriately reconfigured, even though we have made the
7124 argument that the legislation itself that was originally
7125 drafted spoke only to a title and spoke only to a specific
7126 title. And so, I would hope that my colleagues would see
7127 the value of making sure that you do not defund the ability
7128 to provide for life threatening circumstances. Let me be
7129 clear in stating that ICE considered the creation of the new
7130 position as an important step in the agency's ongoing work.
7131 But the argument of my amendment is that the services that
7132 are needed are now also being defunded because you are tying
7133 the services or the care to this title.

7134 As many have said, what is in a name? We want people to
7135 be served, and the service that is being given is, I would
7136 hope, sufficiently severe in terms of the needs that our
7137 colleagues would vote for the amendment, the Jackson lee
7138 amendment, that clearly states that we are protecting the
7139 vulnerable by providing the vulnerable with the appropriate
7140 medical care for life threatening illnesses.

7141 I ask my colleagues to support the legislation. And it
7142 has already been stated that the original legislation did
7143 not specifically draw the distinction. But I do think we
7144 are doing a disservice to those who are in detention, not
7145 because of any criminal act, but, as has been stated,
7146 because re-crossing the border or being civilly deported
7147 sometimes provides for the detention of individuals during a
7148 number of proceedings. And, therefore, they should not be
7149 subject to not having the resources and the services that
7150 they need. I ask my colleagues to support the Jackson Lee
7151 amendment on medical care for life threatening illnesses.

7152 With that, I yield back.

7153 Chairman Goodlatte. The chair thanks the gentlewoman
7154 and recognizes himself in opposition to the amendment. As I
7155 have stated with regard to previous amendments, there are a
7156 multitude of other ways to direct complaints to the
7157 Department of Homeland Security to be addressed. And that
7158 would include complaints with regard to medical services
7159 that are received. And the position for which the
7160 gentlewoman offers her amendment is a position that has been
7161 eliminated by the United States Congress, and nonetheless,

7162 the Administration circumvented the will of the Congress in
7163 continuing the position under a different name, and I must
7164 oppose the amendment.

7165 And if the gentlewoman thinks that there are additional
7166 things that need to be done here, she can offer new
7167 legislation to accomplish that. But this is a circumstance
7168 in which the Congress spoke twice as a matter of fact, and
7169 rather than seeing the position properly eliminated as the
7170 law required, they created a position under the same title
7171 with the same duties, and continued to do exactly what they
7172 had been doing.

7173 Mr. Conyers. Would the gentleman yield?

7174 Chairman Goodlatte. I would be happy to yield.

7175 Mr. Conyers. Would the chairman consider working with
7176 some of us here to create the new alternatives that he has
7177 put forward as ways to get out of this --

7178 Chairman Goodlatte. If this gentleman and others come
7179 forward with legislative proposals, of course the committee
7180 will work with the gentleman to examine whether those
7181 proposals are necessary and appropriate to address concerns
7182 that have been raised during the debate here today.

7183 Mr. Conyers. Well, no, I wanted you to work personally
7184 with us to help develop it. I know the chairman, it will
7185 ultimately go to you. But I wanted you to invest some
7186 compassion about the subject, and so we are going to work on
7187 it. But I just wanted to invite you into it.

7188 Chairman Goodlatte. Well, the chair thanks the
7189 gentleman for his concern about my compassion, but the fact
7190 of the matter is, we have shown great compassion in looking
7191 to be assured that the concerns that have been raised here
7192 today are, in fact, being addressed within the Department of
7193 Homeland Security. And the position that is being
7194 eliminated is a position that the Congress has voted to
7195 eliminate. If the gentleman comes forward with evidence
7196 that suggests that there is a need that is not being
7197 addressed, we certainly would work with the gentleman on
7198 looking at ways to address those --

7199 Mr. Conyers. Well, why do you not help me?

7200 Chairman Goodlatte. I just said I would.

7201 Mr. Conyers. Well, you said if I come forward with it,
7202 you would consider it.

7203 Chairman Goodlatte. That is correct.

7204 Mr. Conyers. But I want you to work --

7205 Chairman Goodlatte. Well, as I said --

7206 Mr. Conyers. I want you to invite you --

7207 Chairman Goodlatte. I have already made my statement,

7208 Mr. Conyers, that there are already avenues to address these

7209 concerns. And if, as I say, there is evidence brought

7210 forward by you or others that are not being addressed, we

7211 certainly would be willing to work with you on that.

7212 Mr. Conyers. Thank you very much.

7213 Chairman Goodlatte. I thank the gentleman.

7214 Ms. Lofgren. Mr. Chairman?

7215 Chairman Goodlatte. For what purpose does the

7216 gentlewoman from California seek recognition?

7217 Ms. Lofgren. Strike the last word.

7218 Chairman Goodlatte. The gentlewoman is recognized for 5

7219 minutes.

7220 Ms. Lofgren. I would like to speak in favor of the

7221 Jackson Lee amendment, and note that the legislation before

7222 us would prohibit functions which are substantially similar

7223 to those which are undertaken by the deputy assistant

7224 director of custody programs and community outreach. One of

7225 those functions today is to serve as a hotline to intervene
7226 when there are problems with medical care.

7227 I mean, there are hundreds of cases where individuals
7228 have died in custody, but I want to talk about just one of
7229 them, a gentleman who was a witness before the Immigration
7230 Subcommittee, who testified before us on October 4th, 2007.
7231 His name was Francisco Castaneda. And his testimony was he
7232 came before us with his 14-year-old daughter because he
7233 hoped that even though he was dying he would be able to make
7234 a difference.

7235 When he entered custody in ICE in San Diego in March of
7236 2006, he needed to see a doctor. He had a lesion on his
7237 penis, and instead of going to the specialist that the
7238 doctor recommended, ICE kept putting him off waiting and
7239 waiting. And his testimony was that he started to bleed,
7240 and that there were very bad smells and discharges. But
7241 despite the doctor telling him that he needed a specialist,
7242 he just kept waiting. And finally, he saw an oncologist who
7243 told him it might be cancer, that he needed a biopsy, but
7244 ICE refused to allow him to get the biopsy.

7245 He waited months more. He finally saw a urologist who

7246 said that he needed 2 and a half months to get a biopsy and
7247 an operation, but ICE said that was elective surgery. And
7248 the pain was intense, but all he got from ICE was additional
7249 underwear, additional linens because of the bleeding, and
7250 ibuprofen and Motrin. He was suffering.

7251 Finally in late November of 2006, he was transferred to
7252 the San Pedro Processing Center, where doctors again said
7253 that he needed surgery, he needed a biopsy, but all ICE
7254 would do would be to give him pain pills. Finally, he
7255 noticed a lump in his groin, but he never got treatment for
7256 that. Finally, in January of the following year, he was
7257 taken to UCLA Medical Center, the emergency room, but he was
7258 waiting, and finally they did not allow him to see a doctor
7259 there either.

7260 In the end, he got a phone number for the ACLU and
7261 called Mr. Tom Jawitz, who later came to work for this
7262 committee, who sent letters and called the facility. And
7263 finally towards the end of January, ICE allowed Mr.
7264 Castaneda to get a biopsy, but rather than pay for the
7265 biopsy after he had been in custody for 10 months, they
7266 merely released him and cancelled his doctor's appointment.

7267 And as soon as he got out, he went to UCLA, and of course he
7268 found out that he had cancer. His penis was removed. He
7269 went through chemotherapy, but by then it had spread
7270 throughout his lymph nodes and his stomach, and ultimately
7271 he died, leaving his little 14-year-old daughter, who came
7272 to us at this hearing, without a father.

7273 Now, why would you need an office to receive phone
7274 calls? Because the medical people were complaining. This
7275 is not an isolated instance. If you have violated the
7276 immigration system, it should not be a death sentence. And
7277 there needs to be a relief valve that does not take 10
7278 months to implement.

7279 When I hear that we will prohibit the ability of this
7280 office to respond to a situation like Mr. Castaneda's, I
7281 think how as civilized people could we possibly do that.
7282 You know, sometimes the witnesses that come before us stick
7283 with us, and I remember Mr. Castaneda so well because he
7284 knew he had made mistakes in his life, but he hoped to make
7285 a difference for others. And one of the things that was an
7286 outcome of that testimony was this function in ICE to try
7287 and respond to serious medical conditions that were not

7288 getting the attention that they should get.

7289 I think it would be a travesty, frankly, to eliminate
7290 funding for functions that are substantially similar to what
7291 the Community Outreach Office does today, and that is to
7292 provide this national hotline for intervention in cases such
7293 as Mr. Castaneda. I would urge support of this amendment,
7294 and I yield back.

7295 Chairman Goodlatte. For what purpose does the gentleman
7296 from Rhode Island seek recognition?

7297 Mr. Cicilline. Move to strike the last word.

7298 Chairman Goodlatte. The gentleman is recognized for 5
7299 minutes.

7300 Mr. Cicilline. Mr. Chairman, I seek recognition to
7301 support this amendment. And I just want to alert my
7302 colleagues that we had a similar example in my home State, a
7303 gentleman who came to this country at the age of 17 years
7304 old named Jason Ng, who came here with his parents and his
7305 sister, lawfully entered the United States on a visa. He
7306 then married a woman who was a permanent legal resident and
7307 ultimately a U.S. citizen.

7308 At the same time, shortly after his marriage he was

7309 noticed to appear for an immigration hearing, but the notice
7310 was erroneously sent to a non-existent address, and Mr. Ng
7311 never received it. A few months later an immigration judge
7312 ordered his removal in his absence and without his
7313 knowledge. His wife filed a petition to have his legal
7314 status adjusted, and on the basis of that he was ultimately
7315 detained by ICE.

7316 He was brought to a detention facility, and ultimately
7317 he died. Despite repeatedly complaining to prison officials
7318 about being in excruciating pain, he was diagnosed first
7319 with terminal liver cancer and a broken spine less than a
7320 week before his death. Until that time, he had been
7321 complaining to guards and medical personnel at the facility
7322 about his illness, and they accused him of faking his
7323 illness. He was routinely denied use of a wheelchair
7324 despite his inability to walk, including when his attorney
7325 visited. And he was also required to travel despite the
7326 fact that he was very, very ill.

7327 Only a week before he died, immigration officials forced
7328 Mr. Ng to travel to Hartford, Connecticut for no reason at
7329 all where he was urged to drop his appeal. To get him to

7330 Hartford, the guards forcibly dragged him out of his cell,
7331 shackled his feet and his waist, and dragged him to a
7332 transport van, despite his screaming in pain. And so, he
7333 died leaving two children and a widow.

7334 And tragedies like this would have been avoided if there
7335 were a mechanism by which his family members could have
7336 reached out for assistance. This resulted in a very
7337 substantial judgment against ICE to the expense of the
7338 American taxpayers, but more importantly caused incredible
7339 pain to this family. And this is just one example, as the
7340 gentlelady from California mentioned. There are hundreds of
7341 examples of medical care, which is not properly provided for
7342 people in custody, and we ought to do everything we can to
7343 prevent these kinds of occurrences.

7344 And so, I urge my colleagues to support the amendment.

7345 Ms. Jackson Lee. Would the gentleman yield?

7346 Mr. Cicilline. I would be happy to yield.

7347 Ms. Jackson Lee. I want to thank the gentleman, and I
7348 want to thank the gentlelady -- the gentleman from Rhode
7349 Island and the gentlelady -- for recounting only a few of
7350 the incidences. And, again, that is why I want to emphasize

7351 that however we have characterized the underlying
7352 legislation to eliminate a title, I would ask my colleagues
7353 to think about whether America is like this, is whether this
7354 is the American way.

7355 And that is why after constructive deliberation, such a
7356 position or such a service was created. And again, my
7357 argument is that the hotline and the defunding of a title
7358 should not equate to defunding of the service that is
7359 clearly needed. And there are cases, eons of cases, not
7360 recounted in this hearing, in this markup today that would
7361 make the argument that this is foolhardy in what we are
7362 doing.

7363 And there is not a substitute for the service that we
7364 are speaking of. There is not a way of handling it. And we
7365 had to get to this point because of the tragedy of so many
7366 cases that were occurring, people dying unnecessarily who
7367 had not created a criminal act or not perpetrated a criminal
7368 act. I would think that this is highly un-American. These
7369 are not our values. They do not represent our values. And
7370 it is unfortunate that the underlying legislation is before
7371 us, but the amendment seeks to provide the funding for a

7372 valuable service to save lives.

7373 With that, I ask for the support of the Jackson Lee
7374 amendment.

7375 Chairman Goodlatte. Does the gentleman from Rhode
7376 Island yield back?

7377 Mr. Cicilline. Yes, I yield back.

7378 Chairman Goodlatte. The question occurs on the
7379 amendment offered by the gentlewoman from Texas.

7380 All those in favor, respond by saying aye.

7381 Those opposed, no.

7382 In the opinion of the chair, the noes have it.

7383 Ms. Jackson Lee. Roll call.

7384 Chairman Goodlatte. A recorded vote is requested and
7385 the clerk will call the roll.

7386 Ms. Deterding. Mr. Goodlatte?

7387 Chairman Goodlatte. No.

7388 Ms. Deterding. Mr. Goodlatte votes no.

7389 Mr. Sensenbrenner?

7390 [No response.]

7391 Ms. Deterding. Mr. Coble?

7392 [No response.]

7393 Ms. Deterding. Mr. Smith of Texas?

7394 Mr. Smith of Texas. No.

7395 Ms. Deterding. Mr. Smith of Texas votes no.

7396 Mr. Chabot?

7397 Mr. Chabot. No.

7398 Ms. Deterding. Mr. Chabot votes no.

7399 Mr. Bachus?

7400 [No response.]

7401 Ms. Deterding. Mr. Issa?

7402 [No response.]

7403 Ms. Deterding. Mr. Forbes?

7404 Mr. Forbes. No.

7405 Ms. Deterding. Mr. Forbes votes no.

7406 Mr. King?

7407 Mr. King. No.

7408 Mr. Deterding. Mr. King votes no.

7409 Mr. Franks?

7410 Mr. Franks. No.

7411 Ms. Deterding. Mr. Franks votes no.

7412 Mr. Gohmert?

7413 [No response.]

7414 Ms. Deterding. Mr. Jordan?

7415 [No response.]

7416 Ms. Deterding. Mr. Poe?

7417 Mr. Poe. No.

7418 Ms. Deterding. Mr. Poe votes no.

7419 Mr. Chaffetz?

7420 [No response.]

7421 Ms. Deterding. Mr. Marino?

7422 Mr. Marino. No.

7423 Ms. Deterding. Mr. Marino votes no.

7424 Mr. Gowdy?

7425 Mr. Gowdy. No.

7426 Ms. Deterding. Mr. Gowdy votes no.

7427 Mr. Labrador?

7428 [No response.]

7429 Ms. Deterding. Mr. Farenthold?

7430 Mr. Farenthold. No.

7431 Ms. Deterding. Mr. Farenthold votes no.

7432 Mr. Holding?

7433 Mr. Holding. No.

7434 Ms. Deterding. Mr. Holding votes no.

7435 Mr. Collins?

7436 Mr. Collins. No.

7437 Ms. Deterding. Mr. Collins votes no.

7438 Mr. DeSantis?

7439 Mr. DeSantis. No.

7440 Ms. Deterding. Mr. DeSantis votes no.

7441 Mr. Smith of Missouri?

7442 Mr. Smith of Missouri. No.

7443 Ms. Deterding. Mr. Smith of Missouri votes no.

7444 Mr. Conyers?

7445 Mr. Conyers. Aye.

7446 Ms. Deterding. Mr. Conyers votes aye.

7447 Mr. Nadler?

7448 Mr. Nadler. Aye.

7449 Ms. Deterding. Mr. Nadler votes aye.

7450 Mr. Scott?

7451 Mr. Scott. Aye.

7452 Ms. Deterding. Mr. Scott votes aye.

7453 Ms. Lofgren?

7454 Ms. Lofgren. Aye.

7455 Ms. Deterding. Ms. Lofgren votes aye.

7456 Ms. Jackson Lee?

7457 Ms. Jackson Lee. Aye.

7458 Ms. Deterding. Ms. Jackson Lee votes aye.

7459 Mr. Cohen?

7460 Mr. Cohen. Aye.

7461 Ms. Deterding. Mr. Cohen votes aye.

7462 Mr. Johnson?

7463 Mr. Johnson. Aye.

7464 Ms. Deterding. Mr. Johnson votes aye.

7465 Mr. Pierluisi?

7466 Mr. Pierluisi. Aye.

7467 Ms. Deterding. Mr. Pierluisi votes aye.

7468 Ms. Chu?

7469 Ms. Chu. Aye.

7470 Ms. Deterding. Ms. Chu votes aye.

7471 Mr. Deutch?

7472 Mr. Deutch . Aye.

7473 Ms. Deterding. Mr. Deutch votes aye.

7474 Mr. Gutierrez?

7475 Mr. Gutierrez. Aye.

7476 Ms. Deterding. Mr. Gutierrez votes aye.

7477 Ms. Bass?

7478 [No response.]

7479 Ms. Deterding. Mr. Richmond?

7480 [No response.]

7481 Ms. Deterding. Ms. DelBene?

7482 Ms. DelBene. Aye.

7483 Ms. Deterding. Ms. DelBene votes aye.

7484 Mr. Garcia?

7485 Mr. Garcia. Aye.

7486 Ms. Deterding. Mr. Garcia votes aye.

7487 Mr. Jeffries?

7488 [No response.]

7489 Ms. Deterding. Mr. Cicilline?

7490 Mr. Cicilline. Aye.

7491 Ms. Deterding. Mr. Cicilline votes aye.

7492 Chairman Goodlatte. The gentleman from Idaho?

7493 Mr. Labrador. No.

7494 Ms. Deterding. Mr. Labrador votes no.

7495 Chairman Goodlatte. The gentleman from Ohio?

7496 Mr. Jordan. No.

7497 Ms. Deterding. Mr. Jordan votes no.

7498 Chairman Goodlatte. The gentleman from Texas?

7499 Mr. Gohmert. No.

7500 Ms. Deterding. Mr. Gohmert votes no.

7501 Chairman Goodlatte. Has every member voted who wishes
7502 to vote?

7503 [No response.]

7504 Chairman Goodlatte. The clerk will report.

7505 Ms. Deterding. Mr. Chairman, 14 members voted aye, 17
7506 members voted no.

7507 Chairman Goodlatte. And the amendment is not agreed to.
7508 Are there additional amendments to H.R. 3732?

7509 [No response.]

7510 Chairman Goodlatte. A reporting quorum being present,
7511 the question is on the motion report the bill, H.R. 3732, as
7512 amended, favorably to the House.

7513 Those in favor will say aye.

7514 Those opposed, no.

7515 In the opinion of the chair, the ayes have it, and the
7516 bill, as amended, is ordered reported favorably.

7517 Mr. Conyers. Recorded vote.

7518 Chairman Goodlatte. A recorded vote is requested, and

7519 the clerk will call the roll.

7520 Ms. Deterding. Mr. Goodlatte?

7521 Chairman Goodlatte. Aye.

7522 Ms. Deterding. Mr. Goodlatte votes aye.

7523 Mr. Sensenbrenner?

7524 [No response.]

7525 Ms. Deterding. Mr. Coble?

7526 [No response.]

7527 Ms. Deterding. Mr. Smith of Texas?

7528 Mr. Smith of Texas. Aye.

7529 Ms. Deterding. Mr. Smith of Texas votes aye.

7530 Mr. Chabot?

7531 Mr. Chabot. Aye.

7532 Ms. Deterding. Mr. Chabot votes aye.

7533 Mr. Bachus?

7534 [No response.]

7535 Ms. Deterding. Mr. Issa?

7536 [No response.]

7537 Ms. Deterding. Mr. Forbes?

7538 Mr. Forbes. Aye.

7539 Ms. Deterding. Mr. Forbes votes aye.

7540 Mr. King?

7541 Mr. King. Aye.

7542 Ms. Deterding. Mr. King votes aye.

7543 Mr. Franks?

7544 Mr. Franks. Aye.

7545 Ms. Deterding. Mr. Franks votes aye.

7546 Mr. Gohmert?

7547 Mr. Gohmert. Aye.

7548 Ms. Deterding. Mr. Gohmert votes aye.

7549 Mr. Jordan?

7550 Mr. Jordan. Yes.

7551 Ms. Deterding. Mr. Jordan votes aye.

7552 Mr. Poe?

7553 Mr. Poe. Yes.

7554 Ms. Deterding. Mr. Poe votes aye.

7555 Mr. Chaffetz?

7556 [No response.]

7557 Ms. Deterding. Mr. Marino?

7558 Mr. Marino. Yes.

7559 Ms. Deterding. Mr. Marino votes aye.

7560 Mr. Gowdy?

7561 Mr. Gowdy. Yes.

7562 Ms. Deterding. Mr. Gowdy votes aye.

7563 Mr. Labrador?

7564 Mr. Labrador. Yes.

7565 Ms. Deterding. Mr. Labrador votes aye.

7566 Mr. Farenthold?

7567 Mr. Farenthold. I vote aye.

7568 Ms. Deterding. Mr. Farenthold votes aye.

7569 Mr. Holding?

7570 Mr. Holding. Aye.

7571 Ms. Deterding. Mr. Holding votes aye.

7572 Mr. Collins?

7573 Mr. Collins. Aye.

7574 Ms. Deterding. Mr. Collins votes aye.

7575 Mr. DeSantis?

7576 [No response.]

7577 Ms. Deterding. Mr. Smith of Missouri?

7578 Mr. Smith of Missouri. Aye.

7579 Ms. Deterding. Mr. Smith of Missouri votes aye.

7580 Mr. Conyers?

7581 Mr. Conyers. No.

7582 Ms. Deterding. Mr. Conyers votes no.
7583 Mr. Nadler?
7584 Mr. Nadler. No.
7585 Ms. Deterding. Mr. Nadler votes no.
7586 Mr. Scott?
7587 Mr. Scott. No.
7588 Ms. Deterding. Mr. Scott votes no.
7589 Ms. Lofgren?
7590 Ms. Lofgren. No.
7591 Ms. Deterding. Ms. Lofgren votes no.
7592 Ms. Jackson Lee?
7593 Ms. Jackson Lee. No.
7594 Ms. Deterding. Ms. Jackson Lee votes no.
7595 Mr. Cohen?
7596 Mr. Cohen. No.
7597 Ms. Deterding. Mr. Cohen votes no.
7598 Mr. Johnson?
7599 Mr. Johnson. No.
7600 Ms. Deterding. Mr. Johnson votes no.
7601 Mr. Pierluisi?
7602 Mr. Pierluisi. No.

7603 Ms. Deterding. Mr. Pierluisi votes no.

7604 Ms. Chu?

7605 Ms. Chu. No.

7606 Ms. Deterding. Ms. Chu votes no.

7607 Mr. Deutch?

7608 Mr. Deutch. No.

7609 Ms. Deterding. Mr. Deutch votes no.

7610 Mr. Gutierrez?

7611 Mr. Gutierrez. No.

7612 Ms. Deterding. Mr. Gutierrez votes no.

7613 Ms. Bass?

7614 [No response.]

7615 Ms. Deterding. Mr. Richmond?

7616 [No response.]

7617 Ms. Deterding. Ms. DelBene?

7618 Ms. DelBene. No.

7619 Ms. Deterding. Ms. DelBene votes no.

7620 Mr. Garcia?

7621 Mr. Garcia. No.

7622 Ms. Deterding. Mr. Garcia votes no.

7623 Mr. Jeffries?

7624 [No response.]

7625 Ms. Deterding. Mr. Cicilline?

7626 Mr. Cicilline. No.

7627 Ms. Deterding. Mr. Cicilline votes no.

7628 Chairman Goodlatte. The gentleman from Florida?

7629 Mr. DeSantis. Aye.

7630 Ms. Deterding. Mr. DeSantis votes aye.

7631 Chairman Goodlatte. Has every member voted who wishes

7632 to vote?

7633 Ms. Jackson Lee. Mr. Chairman?

7634 Chairman Goodlatte. For what purpose does the

7635 gentlewoman from Texas seek recognition?

7636 Ms. Jackson Lee. How am I recorded?

7637 Ms. Deterding. Ms. Jackson Lee votes no.

7638 Chairman Goodlatte. The clerk will report.

7639 Ms. Deterding. Mr. Chairman, 17 members voted aye, 14

7640 members no.

7641 Chairman Goodlatte. The ayes have it, and the bill, as

7642 amended, is ordered reported favorably to the House.

7643 Members will have 2 days to submit views.

7644 [The information follows:]

7645

7646 Chairman Goodlatte. And without objection, the bill
7647 will be reported as a single amendment in the nature of a
7648 substitute, incorporating all adopted amendments. And staff
7649 is authorized to make technical and conforming changes.

7650 That concludes the business before the committee today.
7651 I want to thank everyone for their help and endurance over a
7652 long day, and thank everyone who attended. And the meeting
7653 is adjourned.

7654 [Whereupon, at 7:15 p.m., the committee was adjourned.]